

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LIBERTY MUTUAL INSURANCE COMPANY

Plaintiff,

07 CV 11292 (JFK)

- against -

**DECLARATION OF  
ANDREW M. PREMISLER**

TRAVELERS PROPERTY CASUALTY COMPANY  
OF AMERICA f/k/a THE TRAVELERS  
INDEMNITY COMPANY OF ILLINOIS,

Defendant.

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**ANDREW M. PREMISLER, ESQ.**, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a partner with the law firm of Lazare Potter Giacobas & Kranjac, LLP, attorneys for Defendant Travelers Property Casualty Company of America (“Travelers”) f/k/a The Travelers Indemnity Company of Illinois. I submit this declaration in further support of Travelers’ motion to dismiss the complaint in lieu of an answer and in opposition to Plaintiff’s request for a determination that 475 Ninth Avenue Associates, LLC (“475 Ninth”) and VJB Construction Corp. (“VJB”) are additional insureds on the Travelers Policy.

2. Travelers’ arguments are set forth in detail in the accompanying reply memorandum of law and will not be repeated here. Listed below are descriptions of the exhibits referred to in Travelers’ reply memorandum and attached to this declaration.

Exhibit “A”	The April 13, 2004 letter from Ryan, Devereaux & Conlon, LLP to R&J Construction;
Exhibit “B”	Travelers’ May 11, 2004 disclaimer letter;
Exhibit “C”	Excerpts of the September 28, 2007 deposition transcript of 475 Ninth’s Stephen Benjamin in the state action;

Exhibit “D”                      The October 20, 2003 Summons and Complaint in the state action;<sup>1</sup>

Exhibit “E”                      Excerpts of the April 5, 2005 deposition transcript of VJB Construction Corp.’s Edward Venezia.

3.        Thus, based upon the above and for the reasons stated in the accompanying papers, Travelers respectfully asks the Court to dismiss the complaint in its entirety.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on April 1, 2008 in New York, New York.

s/ Andrew M. Premisler

Andrew M. Premisler, Esq.

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<sup>1</sup>        On October 28, 2004, the state court severed the third-party action from the underlying first-party action only for the purposes of trial. (02/22/08 Potashner Aff., Ex “7”). The matters, however, remained consolidated for discovery and motion practice. Although there was no written order severing the second third-party action, the Court verbally directed that said action be severed only for the purposes of trial. Again, all pre and post trial proceedings on all of the state claims remained consolidated. In fact, following the trial, all parties on all of the actions appeared before the state court in connection with 475 Ninth, VJB and Liberty’s motion to reargue the August 2007 Order. (01/22/08 Prem. Dec. at ¶ 2, Exh. “Q”). It was at this time, that the state court ordered that the “entire case” -- e.g., all of the coverage claims -- be dismissed. (01/22/08 Prem. Dec. at ¶ 2, Exh. “Q”[pp. 37, 43-44). Moreover, although the state action was settled on the record, Liberty (upon information and belief) has never paid any portion of the settlement amount to the underlying plaintiffs.

# Exhibit A

FROM : ALLIANCEPLUS

FAX NO. : 5167426117

Apr. 14 2004 10:43AM P3

04/14/2004 10:00

2127854487

RYAN &amp; DEVEREAUX LLP

PAGE 02

**RYAN, DEVEREAUX & CONLON, LLP**

39 BROADWAY, SUITE 910  
NEW YORK, NEW YORK 10006  
(212) 785-5959/Fax No. (212) 785-4487

Kieran J. Conlon  
Michael J. Devereaux  
William F. Ryan

[www.rdc-lawyers.com](http://www.rdc-lawyers.com)

Stewart A. McMillan\*\*  
Elizabeth E. Malang  
Janet R. Abrams\*  
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Of Counsel:  
Matthew T. Brown

\*Admitted NY, NJ  
\*\*Admitted NY, CT

April 13, 2004

Via Fax (516) 432-6322/By-Mail

Joe Ferrara, Vice President  
R & J CONSTRUCTION  
4435 Austin Boulevard  
Island Park, NY 11561

Re: *Comprehensive General Liability Insurance*  
*Insurer* : Travelers Indemnity Company  
*Insured* : R & J Construction Corp.  
*Additional Insured* : VJB Construction Corp.  
*Additional Insured* : Kajima Construction/VJB LLC  
*Policy No.* : CO963K2686TIL02  
*Policy Effective Dates* : 01/01/02 - 01/01/03  
*Policy Limits* : \$1,000,000/\$2,000,000  
*Claimants* : George Santoli, Stacey Santoli  
*Court/Venue* : Supreme, New York County  
*Index No.* : 118596/03  
*Our File No.* : MLi70014

Dear Mr. Ferrara:

This is our second letter. By letter dated February 23rd, we notified you that we are attorneys representing VJB Construction Corp. ("VJB"), against a personal injury lawsuit started by the plaintiffs George Santoli and Stacey Santoli. The plaintiff George Santoli alleged that he was caused to trip and fall due to negligence. You were required to keep the premises clear of materials, debris and electrical cords.

*We requested you to urgently notify your CGL carrier. This request was and remains urgent and serious (emphasis added).* We never heard from you. This is our second request.

VJB hereby again demands that you do the following as soon as possible to protect VJB and yourself by ensuring insurance applies:

FROM : ALLIANCEPLUS

FAX NO. : 5167426117

Apr. 14 2004 10:44AM P4

04/14/2004 10:00 2127854487

RYAN &amp; DEVEREAUX LLP

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Joe Ferrara, Vice President  
 April 13, 2004  
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- notify your insurer Travelers Indemnity Company to immediately step-in to defend VJB against the plaintiff's herein lawsuit
- copy the undersigned on that notice to your insurer
- provide the name of the contact person for your communications with your insurer, including address, telephone and fax numbers
- provide a true and accurate copy of your insurance policy number CPP3113891 with your insurer
- that you step-in to defend and indemnify VJB against the plaintiff's herein lawsuit
- that if you are represented by counsel, that you provide the name, address, telephone and fax number of your attorneys

R&J Construction ("R&J") represented that they purchased a comprehensive general liability (CGL) insurance policy number CO963K2686TIL02 from Travelers Indemnity Co. R&J also represented that VJB was an additional insured on policy number CO963K2686TIL02. R&J also represented the following:

CGL insurance policy number	: CO963K2686TIL02
Policy effective dates	: 01/01/03 – 01/01/04
Policy Lts	: \$1 million/\$2 million
Insured	: R&J Construction
Additional Insured	: VJB
Additional Insured	: Kajima Construction/VJB LLC

R&J made these representations by and through Allianceplus, Inc. Please confirm that these representations were true and accurate. A copy of your Certificate of Liability Insurance was enclosed in our first letter.

R&J entered into a Subcontract dated January 9, 2002 with the construction manager Kajima/VJB Construction Services LLC to do electrical work on the Project at 475 9th Avenue (the "Subcontract"). By Subcontract, R&J agreed to maintain CGL insurance at Exhibit B(B) of the Subcontract as follows:

**B) Commercial General Liability Insurance** with the following features:

- Occurrence Coverage under the Commercial General Liability ISO form.
- Limits not less than
 

\$2,000,000 General Aggregate/Per Project
\$2,000,000 products/completed operations aggregate
\$2,000,000 Each Occurrence

FROM : ALLIANCEPLUS

FAX NO. : 5167426117

Apr. 14 2004 10:44AM P5

04/14/2004 10:00 2127854487

RYAN & DEVEREAUX LLP

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Joe Ferrara, Vice President  
April 13, 2004  
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\$1,000,000 personal injury & advertising injury  
\$ 5,000 Medical Expense (Any one person)

- Owner, Architect and others are additional insured as required in the Contract Documents. Please include the following as an additional insured:
- Kajima Construction/VJB LLC
- VJB Construction Corp. - 200 West 56th St., New York, NY 10019
- Kajima International and all its subsidiaries (Kajima Construction Services Inc., Kajima Associates Inc., Kajima Associates/Architects, A Professional Corporation).
- Other insurance clause to be deleted and insurance is to apply on a primary basis for additional insured. Rights of subrogation against additional insured are waived and evidence of waiver shall be in a form equivalent in all respects to ISO 1984 form CG 24 04 11 85. A copy of the policy endorsement for waiver of subrogation must be submitted with the insurance certificate prior to mobilization on the site.

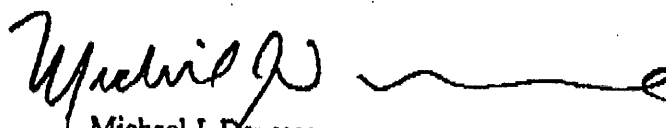
R&J agreed, among other things, to keep aisles, stairways, fire exits and doorways clear of materials, debris and electrical cords at Exhibit F §23k of the Subcontract as follows:

- k) Aisles, stairways, fire exits and doorways must be kept clear of materials, debris and electrical cords.

*Accordingly, please comply with the demands as soon as possible. It is urgent and serious (emphasis added).*

Thank you for your kind attention and cooperation.

Truly yours,



Michael J. Devereaux

RYAN, DEVEREAUX & CONLON, LLP

MJD:khd

cc: Allianceplus, Inc. (via fax)  
Travelers Indemnity Co. (via fax)

# Exhibit B



*Joanne Candela, Sr. Technical Specialist*

*Travelers Property Casualty  
One Whitehall St., 2nd Fl.  
New York, NY 10004*

*212-859-3257  
212-859-3297 - fax*

May 11, 2004

Ryan, Devereaux & Conlon, LLP  
39 Broadway, Suite 910  
New York, NY 10006

Attn: Michael J. Devereaux

Re: Insured: R&J Construction

Claimant: George Santoli

Date of Loss: 4/7/03

Our File #: B6X5361

Your File #: MLI70014

Caption: George Santoli and Stacey Santoli v. 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, VJB Construction Corp., Spieler & Ricca Electrical Co., Inc. and Kajima Development Corporation

Dear Mr. Devereaux:

This letter will serve to acknowledge receipt of your correspondence with regard to the above-captioned matter and will advise you of the Travelers Property Casualty Company of America's (Travelers) determination that it has no duty to defend and/or any obligation to indemnify VJB Construction Corporation in this matter pursuant to the Commercial General Liability policy issued by Travelers to R&J Construction Corporation under policy number DT88JCO-963K2686 or the policy period 1/1/03 to 1/1/04 (the policy).

The complaint captioned above alleges George Santoli was injured due to negligence and violations of the New York State Labor Law by all of the defendants.

The applicable section of the COMMERCIAL GENERAL LIABILITY COVERAGE FORM, GNC0010198 of the policy contains the following Insuring Agreement and Conditions Section, which provides, in relevant part:

**SECTION I-COVERAGES**

**COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**1. Insuring Agreement**



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- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies.

\* \* \*

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the coverage territory", and

- (2) The "bodily injury" or "property damage" occurs during the policy period.

#### **SECTION V - DEFINITIONS**

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

"Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

"Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

"Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

"Your work" means:

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- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- b. The providing of or failure to provide warnings or instructions.

After a review of the policy it has been determined that VJB Construction Corp. is not a Named Insured and does not qualify as an insured pursuant to the policy issued to R&J Construction Corp..

The policy also contains BLANKET ADDITIONAL INSURED ENDORSEMENT CGD2100798, which states, in relevant part:

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY CONTRACTORS COVERAGE  
PART**

- 1. WHO IS AN INSURED (Section II) is amended to include any person or organization you are required by written contract to include as an additional insured on this policy by a written contract or written agreement in effect during this policy period and executed prior to the occurrence of any loss.
- 2. The insurance provided to the additional insured is limited as follows:
  - (a) The person or organization is only an additional insured with respect to liability arising out of "your work" for that additional insured.
  - (b) In the event that the limits of liability stated in the policy exceed the limits of liability required by the written contract or written agreement, the insurance provided by this endorsement shall be limited to the limits of liability required by the written contract. This endorsement shall not increase the limits stated in Section III-LIMITS OF INSURANCE.
  - (c) The insurance provided to the additional insured does not apply to "bodily injury, "property damage", "personal injury" or "advertising injury" arising out of an architect's, engineer's or surveyor's rendering of or failure to render any

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professional services including:

I The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and

II. Supervisory or inspection activities performed as part of any related architectural or engineering activities.

(d) Except when required by written contract or written agreement, the coverage provided to the additional insured by this endorsement does not apply to "bodily injury" or "property damage" arising out of acts or omissions of the additional insured other than in connection with the general supervision of "your work".

(e) This insurance does not apply to "bodily injury" or "property damage" arising out of "your work" included in the "products-completed operations hazard" unless you are required to provide such coverage by written contract or written agreement and then only for the period of time required by the contract and in no event beyond the expiration date of the policy.

3. Subpart (1)(a) of the Pollution exclusion under Paragraph 2., Exclusions of Bodily Injury and Property Damage Liability Coverage (Section I-Coverages) does not apply to you if the "bodily injury" or "property damage" arises out of "your work" performed on premises which are owned or rented by the additional insured at the time "your work" is performed.

4. Any coverage provided by this endorsement to an additional insured shall be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a written contract or agreement specifically requires that this insurance apply on a primary or contributory basis.

5. As soon as practicable, each additional insured must give us prompt notice of any "occurrence" which may result in a claim, forward all legal papers to us, cooperate in the defense of any actions, and otherwise comply with policy conditions.

After a review of the additional insured endorsement it has been determined VJB Construction Corporation does not qualify as an additional insured.

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In order to trigger coverage under the Blanket Additional Insured Endorsement, there must be a written contract or agreement executed prior to the occurrence of any loss indicating who will be named as additional insured. The liability must arise out of the named insured's work for the additional insured and the endorsement excludes coverage for "bodily injury" or "property damage" arising out of acts or omissions of the additional insured other than in connection with the general supervision of "your work".

Based on section 2a of the Blanket Additional Insured endorsement, insurance provided to the additional insured is with respect to liability arising out of "your work" for that additional Insured. R&J Construction was not performing work for VJB Construction Corporation pursuant to the contract. Coverage is denied for this reason.

Furthermore, should it be determined that VJB Construction Corporation qualifies as an additional insured, which Travelers expressly denies, then all of the allegations of negligent, reckless and careless conduct in the complaint seek recovery for "bodily injury" arising out of the acts or omissions of VJB Construction Corporation. As indicated the Blanket Additional Insured endorsement does not apply to "bodily injury" arising out of acts or omissions of the additional insured other than in connection with the general supervision of "your work". As to those allegations there is no coverage pursuant to 2. d of the Blanket Additional Insured endorsement.

Moreover, should it be determined that VJB Construction Corporation qualifies as an additional insured, which Travelers expressly denies, then the Labor Law 200 claim seeks recovery for "bodily injury" arising out of the acts or omissions of VJB Construction Corporation. As indicated the Blanket Additional Insured endorsement does not apply to "bodily injury" arising out of acts or omissions of the additional insured other than in connection with the general supervision of "your work". As to those allegations there is no coverage pursuant to 2. d of the Blanket Additional Insured endorsement

Additionally, should it be determined that VJB Construction Corporation qualifies as an additional insured, which Travelers expressly denies, then the Labor Law 241 claim seeks recovery for "bodily injury" arising out of the acts or omissions of VJB Construction Corporation. As indicated the Blanket Additional Insured endorsement does not apply to "bodily injury" arising out of acts or omissions of the additional insured other than in connection with the general supervision of "your work". As to those allegations there is no coverage pursuant to 2. d of the Blanket Additional Insured endorsement

Should it be determined that VJB Construction Corporation qualifies as an additional insured under the policy issued to R&J Construction, which Travelers expressly denies, then the coverage would be excess over any other valid and collectible insurance available to the additional insureds as indicated in the Blanket Additional Insured Endorsement.

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Travelers also refers you to the Conditions Portion of the policy which states in relevant part:

**SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**

**2. Duties in the Event of Occurrence, Claim or Suit**

\* \* \*

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insureds will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

Should it be determined that VJB Construction Corporation qualifies as additional insured on the policy, which Travelers expressly denies, then VJB Construction Corporation breached the policy conditions. As a condition precedent to coverage under the Blanket Additional Insured Endorsement, each additional insured must give us prompt notice of any "occurrence" which may result in a claim, forward all legal papers to us, cooperate in the defense of any actions, and otherwise comply with policy conditions. The alleged incident occurred on April 7, 2003. Travelers' first notice of a request for coverage by VJB Construction Corporation under the R&J Construction Corporation policy was a letter dated April 13, 2004 from attorneys Ryan, Devereaux & Conlon, LLP and received by Travelers on April 14, 2004. Notice was given to Travelers approximately one year after the date of loss and was, therefore, untimely. Coverage is

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denied to VJB Construction Corporation for this reason. Moreover, the original Summons & Complaint filed against VJB Construction Corporation is dated October 20, 2003 and VJB Construction Corporation received the Summons & Complaint on or about October 20, 2003. The requirements of the Blanket Additional Insured Endorsement indicate each additional insured must give prompt notice of an "occurrence" which may result in a claim, forward all legal papers to us, cooperate in the defense of any actions, and otherwise comply with policy conditions. As stated the legal papers sent to Travelers by Ryan, Devereaux & Conlon were not received until April 14, 2004. VJB Construction Corporation breached the notice conditions under the Blanket Additional Insured Endorsement and coverage is, therefore, denied.

Additionally, as indicated in the policy conditions, if a claim is made or "suit" is brought against any insured, you must immediately record the specifics of the claim or "suit" and the date received and notify us as soon as practicable. As previously stated, the original lawsuit filed against VJB Construction Corporation is dated October 20, 2003 and VJB Construction Corporation received the Summons & Complaint on or about October 20, 2003. Travelers did not receive a request by VJB Construction Corporation for coverage under the R&J Construction policy until April 14, 2004. VJB Construction Corporation breached the policy conditions as stated in Section IV, 2b.(1) and (2), therefore, coverage is denied to VJB Construction Corporation.

Also, as indicated in the conditions, you must see to it that we receive written notice of the claim or "suit" as soon as practicable. You and any other involved insured must immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit"; authorize us to obtain records and other information; cooperate with us in the investigation or settlement of the claim or defense against "suit"; and assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply. Moreover, no insureds will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent. As stated previously, the Summons & Complaint is dated October 20, 2003. Travelers did not receive a request from VJB Construction Corporation for coverage under the R&J Construction policy until April 14, 2004. VJB Construction Corporation breached the policy conditions as stated in Section IV, c., (1), (2), (3), (4) and d. of the policy and coverage is therefore, denied to VJB Construction Corporation.

Although Ryan, Devereaux & Conlon has not requested coverage for 475 Ninth Avenue LLC, VJB Construction 475 9th Ave., LLC and/or Kajima Development Corporation in their letter of April 13, 2004, we will treat your letter as if you did and accordingly, Travelers position as it relates to these entities is set forth below.

As to Kajima Development Corporation and VJB 9th Avenue Associates LLC, there is no indication there is a written contract requiring these entities be named as additional insureds as required in the Blanket Additional Insured endorsement. Coverage is denied for this reason.



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Based on section 2a of the Blanket Additional Insured endorsement, insurance provided to the additional insured is with respect to liability arising out of "your work" for that additional Insured. R&J Construction was not performing work for 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation pursuant to the contract. Coverage is denied for this reason.

Furthermore, should it be determined that 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation qualify as additional insureds, which Travelers expressly denies, then all of the allegations of negligent, reckless and careless conduct in the complaint seek recovery for "bodily injury" arising out of the acts or omissions of 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation. As indicated the Blanket Additional Insured endorsement does not apply to "bodily injury" arising out of acts or omissions of the additional insured other than in connection with the general supervision of "your work". As to those allegations there is no coverage pursuant to 2. d of the Blanket Additional Insured endorsement.

Moreover, should it be determined that 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation qualify as additional insureds, which Travelers expressly denies, then the Labor Law 200 claim seeks recovery for "bodily injury" arising out of the acts or omissions of 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation. As indicated the Blanket Additional Insured endorsement does not apply to "bodily injury" arising out of acts or omissions of the additional insured other than in connection with the general supervision of "your work". As to those allegations there is no coverage pursuant to 2. d of the Blanket Additional Insured endorsement

Additionally, should it be determined that 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation qualify as additional insureds, which Travelers expressly denies, then the Labor Law 241 claim seeks recovery for "bodily injury" arising out of the acts or omissions of 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation. As indicated the Blanket Additional Insured endorsement does not apply to "bodily injury" arising out of acts or omissions of the additional insured other than in connection with the general supervision of "your work". As to those allegations there is no coverage pursuant to 2. d of the Blanket Additional Insured endorsement

Should it be determined that 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation qualify as an additional insureds under the policy issued to R&J Construction, which Travelers expressly denies, then the coverage would be excess over any other valid and collectible insurance available to the additional insureds as indicated in the Blanket Additional Insured Endorsement.

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Should it be determined that 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation qualify as additional insured on the policy, which Travelers expressly denies, then 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation breached the policy conditions. As a condition precedent to coverage under the Blanket Additional Insured Endorsement, each additional insured must give us prompt notice of any "occurrence" which may result in a claim, forward all legal papers to us, cooperate in the defense of any actions, and otherwise comply with policy conditions. The alleged incident occurred on April 7, 2003. Travelers' first notice of a request for coverage by 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation under the R&J Construction Corporation policy was a letter dated April 13, 2004 from attorneys Ryan, Devereaux & Conlon, LLP and received by Travelers on April 14, 2004.. Notice was given to Travelers approximately one year after the date of loss and was, therefore, untimely. Coverage is denied to 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation for this reason.

Additionally, as indicated in the policy conditions, if a claim is made or "suit" is brought against any insured, you must immediately record the specifics of the claim or "suit" and the date received and notify us as soon as practicable. As previously stated, the original lawsuit filed against 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation is dated October 20, 2003 and 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation received the Summons & Complaint on or about October 20, 2003. Travelers did not receive a request by 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation for coverage under the R&J Construction policy until April 14, 2004. 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation breached the policy conditions as stated in Section IV, 2b.(1) and (2), therefore, coverage is denied to 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation.

Also, as indicated in the conditions, you must see to it that we receive written notice of the claim or "suit" as soon as practicable. You and any other involved insured must immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit"; authorize us to obtain records and other information; cooperate with us in the investigation or settlement of the claim or defense against "suit"; and assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply. Moreover, no insureds will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent. As stated previously, the Summons & Complaint is dated October 20, 2003. Travelers did not receive a request from 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation for coverage under the R&J Construction policy until April 14, 2004. 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation breached the policy conditions as stated in Section IV, c., (1), (2), (3), (4) and d. of



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the policy and coverage is therefore, denied to 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation.

Finally, please be advised that Travelers has not received any notice of the accident and/or claims asserted against you in the underlying suit from any injured person or other claimant. As a result of the failure of any injured person or other claimant to provide such notice Travelers disclaims coverage for this reason as well.

Consequently, Travelers has no duty to defend and/or any obligation to indemnify VJB Construction Corp., 475 Ninth Avenue Associates LLC, VJB Construction 475 9th Avenue LLC, and/or Kajima Development Corporation in this matter under the Commercial General Liability policy issued to R&J Construction.

This correspondence is not intended to be, nor shall it be construed as an exhaustive listing or discussion of policy terms, conditions, exclusions or endorsements, facts or circumstances, or principles of insurance law which may further provide a basis to preclude coverage under Travelers policy in this matter. Travelers' reserves the right to supplement its declination should information, not currently known to Travelers indicate the applicability of additional grounds. We refer you to the specific insurance policies for a comprehensive review of coverage; including policy terms, conditions, exclusions, and endorsements.

If there are any questions regarding this matter, please feel free to contact the undersigned at 212-859-3257.

Sincerely,

Joanne Candela  
Senior Technical Specialist

cc: Allianceplus, Inc.  
1050 Franklin Avenue, Suite 200  
Garden City, NY 11530

R&J Construction Corp.  
4435 Austin Boulevard  
Island Park, NY 11558

475 Ninth Avenue Associates LLC  
c/o Dermot Meridian LLC  
1775 Broadway, Suite 730  
New York, NY 10022

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May 11, 2004  
Santoli v. R&J

cc: VJB Construction 475 9th Avenue LLC  
Altieri, Kushner, Muccio & Frind  
Attn: Dennis Frind  
60 East 42nd Street  
New York, NY 10165

VJB Construction Corp.  
c/o CT Corporation System  
111 8th Avenue  
New York, NY 10011

Kajima Development Corporation  
Latham & Watkins  
Attn: Jamie Hisiger  
885 Third Avenue  
New York, NY 10022

Hach & Rose, LLP  
185 Madison Avenue, 8th Fl.  
New York, NY 10016

Zeitlin & Dechiara, LLP  
801 2nd Ave., 17th Fl.  
New York, NY 10017

# Exhibit C

Page 1

(1) SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK  
(2) -----x  
(3) GEORGE SANTOLI and STACEY SANTOLI,  
Plaintiffs,  
(4) Index No.  
(5) 118596/03  
(6) -against-  
(7) 475 NINTH AVENUE ASSOCIATES, LLC, VJB  
CONSTRUCTION 475 9th Avenue LLC, VJB  
(8) CONSTRUCTION CORP., SPIELER & RICCA ELECTRICAL  
CO. INC. and KAJIMA DEVELOPMENT CORPAORATION,  
(9) Defendants.  
(10) -----x  
(11) VJB CONSTRUCTION CORP.; and LIBERTY  
INTERNATIONAL UNDERWRITERS a/s/o VJB  
(12) CONSTRUCTION CORP.  
(13) Third-Party Plaintiffs,  
(14) -against-  
(15) R& J CONSTRUCTION CORP.; TRAVELERS INDEMNITY  
COMPANY; TRAVELERS INDEMNITY COMPANY OF AMERICA;  
(16) TRAVELERS INDEMNITY COMPANY CONNECTICUT;  
(17) REPUBLIC FRANKLIN INSURANCE COMPANY; UTICA  
(18) NATIONAL INSURANCE COMPANY OF TEXAS; UTICA  
(19) NATIONAL INSURANCE GROUP UTICA MUTUAL INSURANCE  
(20) COMPANY; UTICA NATIONAL ASSURANCE COMPANY;  
(21) REGIONAL SCAFFOLDING and HOISTING CO., INC.,  
(22) Third-Party Defendants.  
(23) -----x  
(24) September 28, 2007  
(25) 11:38 a.m.  
  
(1) Deposition of STEPHEN BENJAMIN, pursuant  
(2) to Order, at the offices of Dermot, 320 West  
(3) 57th Street, 5th floor, New York, New York  
(4) 10019, before Stephen Kleinman, a Notary Public  
(5) within and for the State of New York.  
(6)  
(7)  
(8)  
(9)  
(10)  
(11)  
(12)  
(13)  
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(15)  
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(17)  
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(19)  
(20)  
(21)  
(22)  
(23)  
(24)  
(25)

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(1) A P P E A R A N C E S :  
(2)  
(3) MICHAEL J. DEVEREAUX, ESQ.  
(4) Attorneys for Defendant and  
(5) Third-Party Plaintiff 475 Ninth Avenue  
(6) Associates  
(7) 39 Broadway suite 910  
(8) New York, New York 10006  
(9)  
(10) LAZARE POTTER GIACOVAS & KRANJAC, LLP  
(11) Attorneys for Second Third-Party  
(12) Defendant Travelers Insurance Company  
(13) 950 Third Avenue  
(14) New York, New York 10022  
(15) BY: ANDREW M. PREMISLER, ESQ.  
(16)  
(17)  
(18)  
(19)  
(20)  
(21)  
(22)  
(23)  
(24)  
(25)

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(1) ----- I N D E X -----  
(2) WITNESS: STEPHEN BENJAMIN  
(3) EXAMINATION BY PAGE  
(4) MR. PREMISLER 5  
(5)  
(6) ----- E X H I B I T S -----  
(7) DEFENDANT'S DESCRIPTION PAGE  
(8) Exh. A, B Certificates of 41  
(9) liability insurance  
(10) Exhibit C Affidavit 47  
(11) Exhibit D Supervisor's accident/incident 57  
(12) report  
(13) Exhibit E Summons 60  
(14) Exhibit F Verified answer 70  
(15) Exhibit G May 11, 2004 letter 83  
(16)  
(17) ----- I N F O R M A T I O N R E Q U E S T S -----  
(18) DIRECTIONS (DI): 15, 91  
(19) INSERT: None  
(20) RULINGS (RL): None  
(21) REQUESTS (RQ): 41  
(22) CERTIFIED (CE): None  
(23) MOTIONS (MO): None  
(24)  
(25)

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(1) S T I P U L A T I O N S  
(2)  
(3) IT IS HEREBY STIPULATED AND AGREED  
(4) by and between counsel for the respective  
(5) parties hereto, that all rights provided  
(6) by the CPLR including the right to object  
(7) to any question except as to the form or  
(8) to move to strike any testimony at this  
(9) examination before trial shall not be a  
(10) bar or waiver to make such motion at, and  
(11) is reserved for the trial of this action.  
(12) IT IS FURTHER STIPULATED AND AGREED  
(13) by and between counsel for the respective  
(14) parties hereto that this examination be  
(15) sworn to by the witness before a Notary  
(16) Public other than the Notary Public  
(17) before whom this examination was begun,  
(18) but the failure to do so or to return the  
(19) original of the examination to counsel,  
(20) shall not be deemed a waiver of the  
(21) rights provided by Rule 3116 and Rule  
(22) 3117 of the CPLR and shall be controlled  
(23) thereby.  
(24)  
(25)

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(1)  
(2) **STEPHEN BENJAMIN**, called as  
(3) a witness, having been duly sworn  
(4) by a Notary Public, stated his  
(5) business address as 320 West 57th  
(6) Street, 5th floor, New York, New  
(7) York 10019, was examined and  
(8) testified as follows:  
(9)  
(10)

(11) **EXAMINATION BY**

(12) **MR. PREMISLER:**

(13) **Q.** Good morning.

(14) **A.** Good morning.

(15) **Q.** My name is Andrew Premisler. I  
(16) am a lawyer with the law firm of Lazare  
(17) Potter Giacovas & Kranjac and we represent  
(18) the second third-party defendant in this  
(19) lawsuit, which I am going to refer to today  
(20) as Travelers. It is an insurance company.

(21) We are being sued. There are a  
(22) few other actions involved here today, which  
(23) are not really at issue today, but the one  
(24) that we are here today for is 475 Ninth  
(25) Avenue Associates, Inc. against Travelers,

Page 7

(1)  
(2) If there is any part of my  
(3) question or anything that you don't  
(4) understand, please let me know. I will  
(5) rephrase the question so you and I are both  
(6) on the same page with the questions and the  
(7) answers, okay?

(8) **A.** Okay.

(9) **Q.** Mr. Benjamin, can I have your  
(10) full name and address?

(11) **A.** My work address or home  
(12) address?

(13) **Q.** Let's start with your work  
(14) address.

(15) **A.** Stephen Benjamin, middle  
(16) initial N. The work address is --  
(17) **MR. DEVEREAUX:** Just the work  
(18) address. I will take a subpoena on  
(19) his behalf. So there is no reason for  
(20) the home address.

(21) **A.** Our work address 320 West 57th  
(22) Street, New York, New York 100119.

(23) **Q.** That is the office that we are  
(24) in today?

(25) **A.** Correct.

Page 6

(1)  
(2) okay?  
(3) **A.** Okay.  
(4) **Q.** I am going to be asking you a  
(5) bunch of questions about that lawsuit and the  
(6) facts and circumstances alleged therein.

(7) There is a court reporter  
(8) sitting here to my right. He is going to be  
(9) taking down everything that you and I say.  
(10) So I just ask, in answering my questions,  
(11) that you make all your response verbal. Try  
(12) to answer with a yes or no, no shakes of the  
(13) head, try to keep everything verbal, try to  
(14) refrain from using hand gestures and the  
(15) like. Just remember that the court reporter  
(16) has to take down everything that we say.

(17) Also, please try to keep your  
(18) voice up. It is a small room. So that  
(19) shouldn't be a problem.

(20) If you have any questions,  
(21) problems, concerns, you need to take a break  
(22) at any time, just let me know. If you need  
(23) to use the restroom or you want to take a  
(24) break for lunch or whatever, just let me know  
(25) and we will take a break.

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(1)  
(2) **MR. PREMISLER:** And counsel is  
(3) going to accept a subpoena on his  
(4) behalf?

(5) **MR. DEVEREAUX:** That's fine.

(6) **Q.** Are you currently employed?

(7) **A.** Yes, with The Dermot Company.

(8) **Q.** Is that the official name of  
(9) your employer, The Dermot Company?

(10) **A.** Yes.

(11) **Q.** What is your current position  
(12) at The Dermot Company?

(13) **A.** I am a vice president.

(14) **Q.** And just generally as vice  
(15) president, what are your job duties and  
(16) responsibilities?

(17) **A.** I am generally the person in  
(18) charge of our development activities in New  
(19) York City.

(20) **Q.** When you say "development  
(21) activities," what do you mean by that?

(22) **A.** We are part -- part of our  
(23) business is focused on the development of the  
(24) real estate in New York City, and I am  
(25) responsible for those activities.

Page 9

- (1)
- (2) Q. When you say "development of
- (3) real estate," you mean construction,
- (4) renovation, something else?
- (5) A. All of the above, but I am
- (6) responsible for our financing and general
- (7) project management.
- (8) Q. Are you responsible for general
- (9) project management of all of the Dermot
- (10) Company's properties in New York City?
- (11) A. Yes.
- (12) Q. Okay. How long have you been
- (13) the vice president?
- (14) A. Since 2001.
- (15) Q. Have your job duties and
- (16) responsibilities as a vice president of The
- (17) Dermot Company remained the same from 2001
- (18) until today?
- (19) A. Materially.
- (20) Q. What were some of the
- (21) immaterial changes to your duties and
- (22) responsibilities --
- (23) MR. DEVEREAUX: Objection.
- (24) Q. -- generally speaking, over
- (25) that time?

Page 10

- (1)
- (2) MR. DEVEREAUX: Objection. You
- (3) can go ahead and answer it.
- (4) A. As our business grows, we
- (5) continue to do a lot of different things I am
- (6) a partner in the firm as well and so my
- (7) responsibilities adapt you to, you know, what
- (8) we are investing in.
- (9) Q. What type of business
- (10) organization is The Dermot Company?
- (11) MR. DEVEREAUX: Objection. Go
- (12) ahead.
- (13) Q. Do you understand what I mean
- (14) when I say "business organization"?
- (15) A. No.
- (16) MR. DEVEREAUX: It is a legal
- (17) question.
- (18) MR. PREMISLER: Let me rephrase
- (19) the question.
- (20) MR. DEVEREAUX: Okay.
- (21) Q. Do you know if The Dermot
- (22) Company is a corporation, a partnership, an
- (23) LLC, an LLP or something else?
- (24) A. I don't know exactly it is. I
- (25) believe it is an LLC.

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- (1)
- (2) Q. You mentioned that you are a
- (3) partner in the firm?
- (4) A. Yes.
- (5) Q. Does that mean you are a
- (6) partner in The Dermot Company?
- (7) A. I think a partnership in a
- (8) series of LLCs that invest directly in our
- (9) real estate. I am not an owner of the entity
- (10) called The Dermot Company for which I am a
- (11) vice president. That entity is wholly owned
- (12) by our managing partner, a gentlemen by the
- (13) name of William Dickey.
- (14) Q. Let's try to keep just to this
- (15) lawsuit.
- (16) The entity that is suing here
- (17) is 475 Ninth Avenue Associates, LLC?
- (18) A. Correct.
- (19) Q. What is your relationship with
- (20) that company?
- (21) A. The managing member of that
- (22) entity is an entity called Dermot Meridian,
- (23) LLC. Dermot Meridian was the managing member
- (24) in that LLC with an investor that is
- (25) affiliate of a pension fund that is called

Page 12

- (1)
- (2) The Building Investment Trust. Dermot
- (3) Meridian, LLC was in turn, is in turn, it
- (4) still exists, though the activities are wound
- (5) down Dermot Meridian, LLC was in turn owned
- (6) by two LLCs, one an affiliate of Dermot
- (7) Property Associates and the other an entity
- (8) called Meridian Partners, LLC. I am the
- (9) managing member of Meridian Partners, LLC and
- (10) as such as was responsible, as the managing
- (11) member, for the activities of 475 Ninth
- (12) Avenue during the time that we were engaged
- (13) in developing the project that we are talking
- (14) about.
- (15) Q. You mentioned that the managing
- (16) member of 475 Ninth Avenue Associates, LLC
- (17) was Dermot Meridian LLC and you also mention
- (18) the Building Investment Trust?
- (19) A. Yes.
- (20) Q. Are those the only two members
- (21) of 475 Ninth --
- (22) A. Yes.
- (23) Q. -- Avenue Associates, LLC?
- (24) A. Yes.
- (25) Q. And the Building Investment

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- (1)
- (2) Trust, that is not an affiliate or related
- (3) company with Dermot Meridian, LLC or any of
- (4) its other members' partners?
- (5) **A. No.**
- (6) **Q.** You mentioned that Dermot
- (7) Meridian, LLC has two members and The Dermot
- (8) Company Property?
- (9) **A. Associates.**
- (10) **Q.** Dermot Property Associates and
- (11) Meridian Partners, LLC?
- (12) **A. And just to be specific The**
- (13) **Dermot Property Associates is a large entity**
- (14) **with multiple investments and it has a**
- (15) **single-purpose LLC -- I can't recall the**
- (16) **name -- that is a member in Dermot Meridian.**
- (17) **I can provide that name if you want it.**
- (18) **Q.** So just let me take a step
- (19) back,
- (20) Dermot Property Associates,
- (21) that is another LLC?
- (22) **A. Yes.**
- (23) **Q.** And that has --
- (24) **A. That is not an LLC. It is an**
- (25) **LP. That is a California LP.**

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- (1)
- (2) **Q.** And the partners of that entity
- (3) you just don't recall?
- (4) **A. No. I just don't know the --**
- (5) **it is a single-purpose LLC that Dermot**
- (6) **Property Associates controls that was the**
- (7) **member in -- that is the member in 475 Ninth**
- (8) **Avenue. I don't remember the name and I am**
- (9) **not a partner in it.**
- (10) **MR. DEVEREAUX:** I think we had
- (11) enough of this background.
- (12) **Q.** Meridian Partners, LLC, you
- (13) mentioned that you were the managing partner
- (14) of that entity, correct?
- (15) **A. Managing member, right.**
- (16) **Q.** I'm sorry. The managing
- (17) member.
- (18) **A. Yes. I am that managing member**
- (19) **through another LLC, but I am the personal,**
- (20) **sole owner of that LLC**
- (21) **Q.** Meridian Partners, LLC?
- (22) **A. Meridian Partners, LLC has**
- (23) **several members. I am the managing member**
- (24) **through an entity that I wholly own, which is**
- (25) **called Meridian Advisors, Meridian Realty**

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- (1)
- (2) **Advisors.**
- (3) **Q.** Who are the other member in
- (4) Meridian Partners, LLC?
- (5) **A. A number of individuals.**
- (6) **Q.** Do you know the names of --
- (7) **A. I don't recall. I don't**
- (8) **recall.**
- (9) **DI MR. DEVEREAUX:** I am directing
- (10) **him not to answer that. It is**
- (11) **irrelevant.**
- (12) **MR. PREMISLER:** It is not
- (13) irrelevant, Counsel.
- (14) **MR. DEVEREAUX:** If you want to
- (15) mark it for a ruling, go ahead.
- (16) **MR. PREMISLER:** He already
- (17) answered the question.
- (18) **Q.** The property that we are
- (19) talking about at issue in this case is 475
- (20) Ninth Avenue, New York?
- (21) **A. Yes.**
- (22) **Q.** Do you recall when that project
- (23) started and ended?
- (24) **A. Not the exact dates, but it**
- (25) **started in early 2002 and completed**

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- (1)
- (2) **construction about fifteen months after that**
- (3) **in mid-2003.**
- (4) **Q.** And do you know if it was new
- (5) construction, renovation, something else?
- (6) **A. It was new construction**
- (7) **ground-up construction on a parking lot.**
- (8) **Q.** And what kind of building was
- (9) it?
- (10) **A. Primarily residential building,**
- (11) **underground parking, grade-level retail and**
- (12) **then eleven stories of rental residential.**
- (13) **Q.** And 475 Ninth Avenue
- (14) Associates, LLC, that is the owner of that
- (15) building?
- (16) **A. Was at the time. It is no**
- (17) **longer.**
- (18) **Q.** When did 475 Ninth Avenue
- (19) Associates, LLC, when did their ownership of
- (20) that property cease?
- (21) **A. It is ceased when the property**
- (22) **was sold to an affiliate of Equity**
- (23) **Residential. It's a publicly-traded R-E-I-T.**
- (24) **Q.** Do you remember generally when
- (25) that was?



- (1)
- (2) of how that notice is supposed to work?
- (3) **A. That there should be a notice**
- (4) **provided by the subcontractor that an**
- (5) **incident occurred.**
- (6) **Q. And who is that notice supposed**
- (7) **to be sent to?**
- (8) **A. To the person that they have --**
- (9) **to the entity that they have an agreement**
- (10) **with.**
- (11) **Q. Okay. Is it only that entity**
- (12) **or is it that entity and your company? That**
- (13) **is my question.**
- (14) **A. It's that entity. We are a**
- (15) **third party to this.**
- (16) **Q. Then that entity or the**
- (17) **construction manager, if that is the entity**
- (18) **in question, they are supposed to then**
- (19) **provide, send that along to you?**
- (20) **A. That's right.**
- (21) **MR. PREMISLER: Would you mark**
- (22) **this as Defendant's Exhibit D.**
- (23) **(Defendant's Exhibit D,**
- (24) **supervisor's accident/incident report,**
- (25) **marked for identification.)**

- (1)
- (2) **Q. I would like to show you a**
- (3) **document that is marked as Defendant's**
- (4) **Exhibit D of today's date. It is entitled**
- (5) **"Supervisor's Accident/Incident Report 2003."**
- (6) **Take a look at that document and please allow**
- (7) **your attorney to take a look at it. After**
- (8) **you have had a chance to look at it, let me**
- (9) **know.**
- (10) **A. Okay.**
- (11) **Q. Do you recognize that document?**
- (12) **A. No.**
- (13) **Q. Does that refresh your**
- (14) **recollection at all, one way or another,**
- (15) **whether you received an accident report in**
- (16) **connection with Mr. Santoli's accident before**
- (17) **you were served with a lawsuit?**
- (18) **A. No.**
- (19) **Q. Do you recognize that accident**
- (20) **report or incident report as the form that**
- (21) **was used by the construction manager on this**
- (22) **project?**
- (23) **A. No.**
- (24) **Q. Have you ever seen an**
- (25) **accident/incident report like that before?**

- (1)
- (2) **A. No, it is not my recollection**
- (3) **that I have.**
- (4) **Q. Does that refresh your**
- (5) **recollection at all, one way or another,**
- (6) **whether or not 475 Ninth Avenue Associates**
- (7) **was made aware of the accident prior to**
- (8) **receiving the suit papers in this litigation?**
- (9) **A. No, it does not.**
- (10) **Q. Thanks.**
- (11) **MR. DEVEREAUX: I thought you**
- (12) **said the accident occurred April 7th,**
- (13) **but this says April 3rd.**
- (14) **MR. PREMISLER: Off the record.**
- (15) **(Discussion off the record.)**
- (16) **MR. PREMISLER: For the record,**
- (17) **I may have referred to the accident**
- (18) **date before as April 7th. There may**
- (19) **be or may not be a discrepancy as to**
- (20) **when Mr. Santoli's accident took**
- (21) **place, on April 7th or April 3rd.**
- (22) **A. I am sure there is.**
- (23) **Q. In any event let's proceed.**
- (24) **MR. PREMISLER: If we can mark**
- (25) **this as the next document.**

- (1)
- (2) **(Defendant's Exhibit, E,**
- (3) **summons, marked for identification.)**
- (4)
- (5) **Q. I would like to show you a**
- (6) **document which is marked as Defendant's**
- (7) **Exhibit E. The first page is entitled**
- (8) **"Summons." It is a twenty-two-page document.**
- (9) **A. Yes.**
- (10) **Q. I want you to just take a look**
- (11) **at it.**
- (12) **My question is whether or not**
- (13) **those are the legal papers that you referred**
- (14) **to earlier as 475's first notice of the**
- (15) **accident claim or suit at issue here?**
- (16) **A. This looks like it to me.**
- (17) **Q. Okay. Do you know how this**
- (18) **document was served or otherwise provided to**
- (19) **475 Ninth Associates?**
- (20) **MR. DEVEREAUX: Objection. A**
- (21) **copy or a version of it.**
- (22) **A. No, I don't.**
- (23) **MR. DEVEREAUX: Is that**
- (24) **correct?**
- (25) **MR. PREMISLER: Absolutely.**



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- (1)
- (2) **Q.** Not that particular document,
- (3) but a copy of that document?
- (4) **A.** I don't. I don't.
- (5) **Q.** Is there a practice or
- (6) procedure set up in your office with respect
- (7) to what should happen when legal papers come
- (8) in, whether it be a subpoena or a summons and
- (9) complaint or something else?
- (10) **A.** At about that time?
- (11) **Q.** Yes.
- (12) **A.** At this time, at the time this
- (13) occurred, our -- our --
- (14) **Q.** The date.
- (15) **A.** Generally our procedure would
- (16) be to contact our insurance carrier and
- (17) notify them that we have received this, as
- (18) well as our legal counsel, and they would
- (19) follow through with whatever steps were the
- (20) next appropriate steps.
- (21) **MR. DEVEREAUX:** There are two
- (22) dates on the front. One is October
- (23) 20th and the other October 27th.
- (24) **Q.** So generally, the practice or
- (25) procedure in October of 2003, was it about

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- (1)
- (2) the same?
- (3) **A.** Yes. It would be within a
- (4) reasonable time period, within a week or so,
- (5) and that is to provide this same paper that
- (6) we received to our lawyer and to our
- (7) insurance company; in this case the carrier
- (8) for the contractor who provided us with the
- (9) coverage, Kajima Construction, Kajima/VJB
- (10) Construction, LLC.
- (11) **Q.** But not to Travelers?
- (12) **A.** Correct.
- (13) **Q.** I will take a step back.
- (14) Generally speaking, when mail came into your
- (15) office at or about October of 2003, was it
- (16) stamped received or marked in some other way
- (17) as to when it was actually received?
- (18) **A.** Probably not at that time. We
- (19) were a young company and we probably would
- (20) have just stacked it. It just was us, just
- (21) me and Drew. We would have passed this on to
- (22) our lawyer, you know, and started to take
- (23) action.
- (24) **Q.** Okay. How would you pass it on
- (25) to your lawyer? Would you have written a

## Page 63

- (1)
- (2) letter, an e-mail, something else at that
- (3) time?
- (4) **A.** Yes.
- (5) **Q.** A letter?
- (6) **A.** Or e-mail, yeah, or a phone
- (7) call. Then we would fax it over.
- (8) **Q.** I guess my question is whether
- (9) or not there is any documentation in your
- (10) file anywhere that would indicate when 475
- (11) Ninth Avenue Associates received that
- (12) document, Exhibit E, or a copy of that
- (13) document?
- (14) **A.** I don't know the answer to
- (15) that. It is possible.
- (16) **Q.** What is 1775 Broadway, New
- (17) York, New York?
- (18) **A.** That is our former office.
- (19) 1775 Broadway was our office at that time
- (20) that we were doing this project in general in
- (21) 2003. We subsequently moved to 320 West 57th
- (22) Street, New York. We maintain an office at
- (23) 1775 Broadway as well.
- (24) **Q.** Currently?
- (25) **A.** But it is not in the same

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- (1)
- (2) space.
- (3) **Q.** Suite 730?
- (4) **A.** Yeah. We moved to another
- (5) suite. I don't remember the number, but our
- (6) management company, our property management
- (7) company, Dermot Company Realty Management
- (8) Company, is officed over at 1775 Broadway.
- (9) **Q.** I am asking back in October of
- (10) 2003?
- (11) **A.** Our office was at 1775
- (12) Broadway.
- (13) **Q.** When you say your office, 475
- (14) Ninth Avenue Associates?
- (15) **A.** Yes.
- (16) **Q.** And it would have been suite
- (17) 730 in that building?
- (18) **A.** Yes. I would have to just
- (19) confirm what our lease was, but my
- (20) recollection is that it was suite 730, that
- (21) was not served somewhere else or something,
- (22) that we received it about those dates.
- (23) **Q.** Okay. As you sit here today,
- (24) do you remember when 475 Ninth Avenue
- (25) Associates first received these legal papers?

Page 65

- (1)
- (2) **A. In 2003.**
- (3) **Q. I guess my question is a**
- (4) **little bit broader than that.**
- (5) **Do you remember, generally**
- (6) **speaking, whether or not you personally saw**
- (7) **them when they first came in or somebody**
- (8) **else?**
- (9) **A. I was served the papers.**
- (10) **Q. Oh, you personally?**
- (11) **A. I would have to have been,**
- (12) **because I am the partner. I am the person**
- (13) **who is named within the agreements and my**
- (14) **personal name is as an additional insured.**
- (15) **So I am certain they served me. Again, it is**
- (16) **possible they sent it for convenience to Drew**
- (17) **Spitler, but it was intended for 475 Ninth**
- (18) **Avenue Associates, and I am the known**
- (19) **representative of 475 Ninth Avenue**
- (20) **Associates.**
- (21) **Q. I misunderstood you. So you**
- (22) **would have received these papers sometime in**
- (23) **2003?**
- (24) **A. Yes.**
- (25) **Q. When you say "you," I am**

Page 66

- (1)
- (2) **talking about you personally, not --**
- (3) **A. Yeah.**
- (4) **Q. Okay. Do you remember**
- (5) **specifically what you did when you saw these**
- (6) **legal papers?**
- (7) **A. No, I don't. I don't remember**
- (8) **specifically that I was served the papers.**
- (9) **You know, they may have been served to our**
- (10) **office. Our secretary could have signed.**
- (11) **Drew could have signed. I don't remember**
- (12) **exactly what happened. As I said, we would**
- (13) **have reviewed it and passed it on to our**
- (14) **lawyers Zetlin & Dechiara, to Michael Zetlin.**
- (15) **Q. Okay. Let me just clarify**
- (16) **something. I may have used the word "served"**
- (17) **before.**
- (18) **A. Yes.**
- (19) **Q. I was not using it in a legal**
- (20) **context. When I said "served," I mean when**
- (21) **you were served or received in any way these**
- (22) **legal papers.**
- (23) **A. Yes.**
- (24) **Q. Not officially handed the**
- (25) **papers from a process server, but whether or**

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- (1)
- (2) **not you received, you know, someone gave them**
- (3) **to you otherwise.**
- (4) **A. Yes.**
- (5) **Q. So just to clarify, I just want**
- (6) **to make sure we are both on the same page,**
- (7) **all of us.**
- (8) **Exhibit E, you personally**
- (9) **received these in 2003?**
- (10) **A. No. That is not what I said.**
- (11) **Q. Okay. Then I misunderstood**
- (12) **then.**
- (13) **A. I said that I'm not sure. I do**
- (14) **not recall whether I received those papers**
- (15) **personally and acted on them or whether our**
- (16) **company did.**
- (17) **Q. Okay.**
- (18) **A. Meaning the other few people**
- (19) **that work at 1775 Broadway on behalf of The**
- (20) **Dermot Company and 475 Ninth Avenue at that**
- (21) **time, but I am pretty sure it was me.**
- (22) **Q. It was either you or somebody**
- (23) **else at your company who received the papers**
- (24) **in 2003?**
- (25) **A. Yes, and there were not that**

Page 68

- (1)
- (2) **many people, as we have discussed.**
- (3) **Q. And Zetlin -- Zetlin --**
- (4) **A. Zetlin & Dechiara is the firm,**
- (5) **legal firm who has represented us on behalf**
- (6) **of 475 Ninth Avenue in the negotiation of**
- (7) **this agreement, the construction I mean**
- (8) **Kajima/VJB Construction and all of our**
- (9) **construction-related activities. They were**
- (10) **done on this project and on others.**
- (11) **Q. Were they retained by 475 Ninth**
- (12) **after receiving these litigation papers,**
- (13) **these legal papers?**
- (14) **A. They were retained on an**
- (15) **ongoing basis, not as a result of this. We**
- (16) **had retained them for several years prior to**
- (17) **that.**
- (18) **Q. I just want to clarify. Zetlin**
- (19) **& Dechiara were not retained by an insurance**
- (20) **company, correct?**
- (21) **A. Not on this project.**
- (22) **Q. I am referring to this**
- (23) **particular lawsuit.**
- (24) **A. Yeah, absolutely not.**
- (25) **Q. Okay. This was your company**

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- (1)
- (2) personally that paid them in some way, shape
- (3) or form to represent you in connection with
- (4) this litigation?
- (5) **MR. DEVEREAUX:** Well, I think
- (6) he just said the opposite. I think he
- (7) said he has an ongoing relationship
- (8) with them and it wasn't specific
- (9) retention for this project or this
- (10) lawsuit.
- (11) **THE WITNESS:** Right.
- (12) **A.** They assisted us in reviewing
- (13) this matter and providing assistance with us
- (14) in referring it to our insurance company and
- (15) to our contractor, Kajima/VJB, our
- (16) construction manager, Kajima/VJB
- (17) Construction, so that we followed procedures
- (18) that were required within the construction
- (19) management agreement.
- (20) **MR. DEVEREAUX:** There was no
- (21) specific retention in this aspect. It
- (22) was ongoing.
- (23) **Q.** My question was really, were
- (24) they your lawyers in connection with this
- (25) lawsuit?

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- (1)
- (2) **A.** No.
- (3) **Q.** When you say "our insurance
- (4) company," what insurance company are you
- (5) referring to?
- (6) **A.** Good question. The insurance
- (7) company that was providing the insurance to
- (8) us as additional insured through Kajima/VJB
- (9) Construction Services.
- (10) **Q.** You are not referring to
- (11) Travelers, correct?
- (12) **A.** No.
- (13) **Q.** Okay. Do you remember who that
- (14) insurance company was?
- (15) **A.** My recollection is that it was
- (16) Liberty.
- (17) **Q.** Liberty Mutual Insurance
- (18) Company?
- (19) **A.** I don't recall.
- (20) **MR. PREMISLER:** Could you mark
- (21) that.
- (22) **(Defendant's Exhibit F, verified**
- (23) **answer, marked for identification.)**
- (24) **MR. PREMISLER:** For the record,
- (25) that is Defendant's Exhibit F. It is

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- (1)
- (2) the verified answer of 475 Ninth
- (3) Avenue Associates, LLC dated June 21,
- (4) 2005.
- (5) **Q.** I just want you to take a look
- (6) at that. That is the law firm there --
- (7) **A.** Yes.
- (8) **Q.** -- that appeared on your behalf
- (9) that you were just referring to?
- (10) **A.** Yes. The lawyer's name is Tim
- (11) Hagerty.
- (12) **Q.** Just flip to the second to the
- (13) last page where it has the verification.
- (14) There is a signature above the
- (15) name Stephen N. Benjamin, right?
- (16) **A.** Yes.
- (17) **Q.** Do you recognize that
- (18) signature?
- (19) **A.** Sure do.
- (20) **Q.** And whose signature is that?
- (21) **A.** Mine.
- (22) **MR. DEVEREAUX:** For the record,
- (23) it is June 21, 2004, not 2005.
- (24) **MR. PREMISLER:** Okay.
- (25) **Q.** Do you know when you signed the

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- (1)
- (2) document there?
- (3) **A.** June 21, 2004, and the notary
- (4) was signed on June 22nd.
- (5) **Q.** That is when you signed it?
- (6) **A.** Yes. I thought that was your
- (7) question.
- (8) **Q.** Yes. Do you remember having
- (9) any conversations or communications with
- (10) anybody other than your attorney about this
- (11) lawsuit between the time when 475 Ninth
- (12) Avenue Associates received the litigation
- (13) papers and the time when this verified answer
- (14) was signed?
- (15) **MR. DEVEREAUX:** Just read back
- (16) the question.
- (17) **(Record read.)**
- (18) **MR. DEVEREAUX:** Just objection.
- (19) Vague, but go ahead.
- (20) **MR. PREMISLER:** Just to
- (21) clarify, the litigation papers that
- (22) you are referring to is Defendant's
- (23) Exhibit E.
- (24) **A.** I don't have a definite
- (25) recollection, but I would expect there was

# Exhibit D

K

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

GEORGE SANTOLI and STACEY SANTOLI,

Index No.:

Plaintiff(s),

- against -

03118596

SUMMONS

475 NINTH AVENUE ASSOCIATES LLC, VJB CONSTRUCTION  
475 9<sup>TH</sup> AVENUE LLC, VJB CONSTRUCTION CORP.,  
SPIELER & RICCA ELECTRICAL CO. INC., and  
KAJIMA DEVELOPMENT CORPORATION,

FILED

Defendant(s) OCT 27 2003 Basis of Venue:  
Residence

NEW YORK  
COUNTY CLERK'S OFFICE

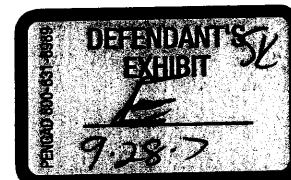
To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Defendants' address is:

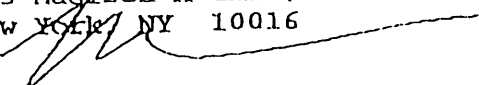
-475 Ninth Avenue Associates LLC, c/o Dermot Meridian, LLC, 1775 Broadway, Suite 730, New York, NY 10022  
-VJB Construction 475 9<sup>th</sup> Avenue LLC, Altieri, Kushner, Muccio & Frind, Attn: Dennis Frind, 60 East 42<sup>nd</sup> Street, New York, NY 10165  
-VJB Construction Corp., c/o C T Corporation System, 111 Eighth Avenue, New York, NY 10011  
-Spieler & Ricca Electrical Co. Inc., Ronald Spieler 52-09 Van Dam Street, Long Island City, New York 11101  
-KAJIMA DEVELOPMENT CORPORATION-Latham & Watkins, Attn: Jamie Hsiiger, 885 Third Avenue, New York, NY 10022

Dated: New York, New York  
October 20, 2003



Yours, etc.

Hach & Rose, LLP  
185 Madison Avenue, 8<sup>th</sup> Floor  
New York, NY 10016

By:   
Michael A. Rose

To:  
475 Ninth Avenue Associates LLC  
c/o Dermot Meridian, LLC  
1775 Broadway, Suite 730  
New York, NY 10022

VJB Construction 475 9<sup>th</sup> Avenue LLC  
Altieri, Kushner, Muccio & Frind  
Attn: Dennis Frind  
60 East 42<sup>nd</sup> Street  
New York, NY 10165

VJB Construction Corp.  
c/o C T Corporation System  
111 Eighth Avenue  
New York, NY 10011

Spieler & Ricca Electrical Co. Inc.  
Ronald Spieler  
52-09 Van Dam Street  
Long Island City, New York 11101

Kajima Development Corporation  
Latham & Watkins  
Attn: Jamie Hisiger  
885 Third Avenue  
New York, NY 10022

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
GEORGE SANTOLI and STACEY SANTOLI,

Index No.

Plaintiff(s),

-against-

VERIFIED COMPLAINT

475 NINTH AVENUE ASSOCIATES LLC, VJB  
CONSTRUCTION 475 9<sup>TH</sup> AVENUE LLC, VJB  
CONSTRUCTION CORP., SPIELER & RICCA  
ELECTRICAL CO. INC., and  
KAJIMA DEVELOPMENT CORPORATION,

03118596

Defendant(s).  
-----X

Plaintiffs, GEORGE SANTOLI and STACEY SANTOLI, by his attorneys, Hach & Rose, L.L.P., complaining of the defendants herein, respectfully shows to this Court, and allege as follows:

1. That at all times hereinafter mentioned the plaintiff(s) were residents of the town of Marlboro, State of New Jersey.
2. That at all times mentioned herein, and on April 7, 2003, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, is was and has been a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.
3. That at all times mentioned herein the defendant, 475 NINTH AVENUE ASSOCIATES LLC, is, was and has been a domestic partnership and/or other domestic business entity doing business in the State of New York.
4. That at all times mentioned herein, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, transacted business within the State of New York; regularly did or solicited business within the State of New York or engaged in other persistent courses conduct and/or derived substantial

revenue from goods used or consumed or services rendered in the State of New York and expected or should have reasonably expected its acts to have consequences within the State of New York and/or derived substantial revenue from interstate or international commerce.

5. That at all times mentioned herein, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, was the owner of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

6. That at all times mentioned herein, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, was the agent of the owner of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

7. That at all times mentioned herein, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, was the lessee of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

8. That at all times mentioned herein, the defendant, all times mentioned herein, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, was the lessor of the land and structures thereon commonly known as 475 Ninth Avenue, New York, NY.

9. That at all times mentioned herein, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, operated the premises commonly known as 475 Ninth Avenue, New York, NY.

10. That at all times mentioned herein, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, controlled the premises commonly known as 475 Ninth Avenue, New York, NY.

11. That at all times mentioned herein, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, maintained the premises commonly known as 475 Ninth Avenue, New York, NY.



12. That at all times mentioned herein, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, possessed and/or occupied the premises commonly known as 475 Ninth Avenue, New York, NY.

13. That at all times mentioned herein, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, was the managing agent of the premises commonly known as 475 Ninth Avenue, New York, NY.

14. That at all times mentioned herein, the defendant, 475 NINTH AVENUE ASSOCIATES LLC, was the general contractor of the premises commonly known as 475 Ninth Avenue, New York, NY.

15. That on or prior to April 7, 2003, 475 NINTH AVENUE ASSOCIATES LLC, retained plaintiff's employer, to perform certain work, labor and/or services at the premises commonly known as 475 Ninth Avenue, New York, NY.

16. That on or prior to April 7, 2003, a party that 475 NINTH AVENUE ASSOCIATES LLC, had leased the aforementioned premises to had retained plaintiff's employer, to perform certain work, labor and/or services at the premises commonly known as 475 Ninth Avenue, New York, NY.

17. That at all times mentioned herein, and on April 7, 2003, the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, is was and has been a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.

18. That at all times mentioned herein the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, is, was and has been a domestic partnership and/or other domestic business entity doing business in the State of New York.

19. That at all times mentioned herein, the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, transacted business within the State of New York; regularly did or solicited business within the State of New York or engaged in other persistent courses conduct and/or derived substantial revenue from goods used or consumed or services rendered in the State of New York and expected or should have reasonably expected its acts to have consequences within the State of New York and/or derived substantial revenue from interstate or international commerce.

20. That at all times mentioned herein, the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, was the owner of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

21. That at all times mentioned herein, the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, was the agent of the owner of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

22. That at all times mentioned herein, the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, was the lessee of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

23. That at all times mentioned herein, the defendant, all times mentioned herein, the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, was the lessor of the land and structures thereon commonly known as 475 Ninth Avenue, New York, NY.

24. That at all times mentioned herein, the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, operated the premises commonly known as 475 Ninth Avenue, New York, NY.

25. That at all times mentioned herein, the defendant, VJB

CONSTRUCTION 475 9TH AVENUE LLC, controlled the premises commonly known as 475 Ninth Avenue, New York, NY.

26. That at all times mentioned herein, the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, maintained the premises commonly known as 475 Ninth Avenue, New York, NY.

27. That at all times mentioned herein, the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, possessed and/or occupied the premises commonly known as 475 Ninth Avenue, New York, NY.

28. That at all times mentioned herein, the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, was the managing agent of the premises commonly known as 475 Ninth Avenue, New York, NY.

29. That at all times mentioned herein, the defendant, VJB CONSTRUCTION 475 9TH AVENUE LLC, was the general contractor of the premises commonly known as 475 Ninth Avenue, New York, NY.

30. That on or prior to April 7, 2003, VJB CONSTRUCTION 475 9TH AVENUE LLC, retained plaintiff's employer, to perform certain work, labor and/or services at the premises commonly known as 475 Ninth Avenue, New York, NY.

31. That on or prior to April 7, 2003, a party that VJB CONSTRUCTION 475 9TH AVENUE LLC, had leased the aforementioned premises to had retained plaintiff's employer, to perform certain work, labor and/or services at the premises commonly known as 475 Ninth Avenue, New York, NY.

32. That at all times mentioned herein the defendant, VJB CONSTRUCTION CORP., is, was and has been a domestic partnership and/or other domestic business entity doing business in the State of New York.

33. That at all times mentioned herein, the defendant, VJB CONSTRUCTION CORP., transacted business within the State of New York; regularly did or solicited business within the State of New York or engaged in other persistent courses conduct and/or derived substantial revenue from goods used or consumed or services rendered in the State of New York and expected or should have reasonably expected its acts to have consequences within the State of New York and/or derived substantial revenue from interstate or international commerce.

34. That at all times mentioned herein, the defendant, VJB CONSTRUCTION CORP., was the owner of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

35. That at all times mentioned herein, the defendant, VJB CONSTRUCTION CORP., was the agent of the owner of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

36. That at all times mentioned herein, the defendant, VJB CONSTRUCTION CORP., was the lessee of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

37. That at all times mentioned herein, the defendant, all times mentioned herein, the defendant, VJB CONSTRUCTION CORP., was the lessor of the land and structures thereon commonly known as 475 Ninth Avenue, New York, NY.

38. That at all times mentioned herein, the defendant, VJB CONSTRUCTION CORP., operated the premises commonly known as 475 Ninth Avenue, New York, NY.

39. That at all times mentioned herein, the defendant, VJB CONSTRUCTION CORP., controlled the premises commonly known as 475 Ninth

Avenue, New York, NY.

40. That at all times mentioned herein, the defendant, VJB CONSTRUCTION CORP., maintained the premises commonly known as 475 Ninth Avenue, New York, NY.

41. That at all times mentioned herein, the defendant, VJB CONSTRUCTION CORP., possessed and/or occupied the premises commonly known as 475 Ninth Avenue, New York, NY.

42. That at all times mentioned herein, the defendant, VJB CONSTRUCTION CORP., was the managing agent of the premises commonly known as 475 Ninth Avenue, New York, NY.

43. That at all times mentioned herein, the defendant, VJB CONSTRUCTION CORP., was the general contractor of the premises commonly known as 475 Ninth Avenue, New York, NY.

44. That on or prior to April 7, 2003, VJB CONSTRUCTION CORP., retained plaintiff's employer, to perform certain work, labor and/or services at the premises commonly known as 475 Ninth Avenue, New York, NY.

45. That on or prior to April 7, 2003, a party that VJB CONSTRUCTION CORP., had leased the aforementioned premises to had retained plaintiff's employer, to perform certain work, labor and/or services at the premises commonly known as 475 Ninth Avenue, New York, NY.

46. That at all times mentioned herein the defendant, SPIELER & RICCA ELECTRICAL CO. INC., is, was and has been a domestic partnership and/or other domestic business entity doing business in the State of New York.

47. That at all times mentioned herein, the defendant, SPIELER & RICCA ELECTRICAL CO. INC., transacted business within the State of New York; regularly did or solicited business within the State of New York or engaged in other persistent courses conduct and/or derived substantial revenue from goods used or consumed or services rendered in the State of New York and expected or should have reasonably expected its acts to have consequences within the State of New York and/or derived substantial revenue from interstate or international commerce.

48. That at all times mentioned herein, the defendant, SPIELER & RICCA ELECTRICAL CO. INC., was the owner of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

49. That at all times mentioned herein, the defendant, SPIELER & RICCA ELECTRICAL CO. INC., was the agent of the owner of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

50. That at all times mentioned herein, the defendant, SPIELER & RICCA ELECTRICAL CO. INC., was the lessee of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

51. That at all times mentioned herein, the defendant, all times mentioned herein, the defendant, SPIELER & RICCA ELECTRICAL CO. INC., was the lessor of the land and structures thereon commonly known as 475 Ninth Avenue, New York, NY.

52. That at all times mentioned herein, the defendant, SPIELER & RICCA ELECTRICAL CO. INC., operated the premises commonly known as 475 Ninth Avenue, New York, NY.

53. That at all times mentioned herein, the defendant, SPIELER & RICCA ELECTRICAL CO. INC., controlled the premises commonly known as 475

Ninth Avenue, New York, NY.

54. That at all times mentioned herein, the defendant, SPIELER & RICCA ELECTRICAL CO. INC., maintained the premises commonly known as 475 Ninth Avenue, New York, NY.

55. That at all times mentioned herein, the defendant, SPIELER & RICCA ELECTRICAL CO. INC., possessed and/or occupied the premises commonly known as 475 Ninth Avenue, New York, NY.

56. That at all times mentioned herein, the defendant, SPIELER & RICCA ELECTRICAL CO. INC., was the managing agent of the premises commonly known as 475 Ninth Avenue, New York, NY.

57. That at all times mentioned herein, the defendant, SPIELER & RICCA ELECTRICAL CO. INC., was the general contractor of the premises commonly known as 475 Ninth Avenue, New York, NY.

58. That on or prior to April 7, 2003, SPIELER & RICCA ELECTRICAL CO. INC., retained plaintiff's employer, to perform certain work, labor and/or services at the premises commonly known as 475 Ninth Avenue, New York, NY.

59. That on or prior to April 7, 2003, a party that SPIELER & RICCA ELECTRICAL CO. INC., had leased the aforementioned premises to had retained plaintiff's employer, to perform certain work, labor and/or services at the premises commonly known as 475 Ninth Avenue, New York, NY.

60. That at all times mentioned herein, and on April 7, 2003, the defendant, KOWIMA DEVELOPMENT CORPORATION, is was and has been a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York.



61. That at all times mentioned herein the defendant, KAJIMA DEVELOPMENT CORPORATION, is, was and has been a domestic partnership and/or other domestic business entity doing business in the State of New York.

62. That at all times mentioned herein, the defendant, KAJIMA DEVELOPMENT CORPORATION, transacted business within the State of New York; regularly did or solicited business within the State of New York or engaged in other persistent courses conduct and/or derived substantial revenue from goods used or consumed or services rendered in the State of New York and expected or should have reasonably expected its acts to have consequences within the State of New York and/or derived substantial revenue from interstate or international commerce.

63. That at all times mentioned herein, the defendant, KAJIMA DEVELOPMENT CORPORATION, was the owner of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

64. That at all times mentioned herein, the defendant, KAJIMA DEVELOPMENT CORPORATION, was the agent of the owner of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

65. That at all times mentioned herein, the defendant, KAJIMA DEVELOPMENT CORPORATION, was the lessee of the land and structures thereon, commonly known as 475 Ninth Avenue, New York, NY.

66. That at all times mentioned herein, the defendant, all times mentioned herein, the defendant, KAJIMA DEVELOPMENT CORPORATION, was the lessor of the land and structures thereon commonly known as 475 Ninth Avenue, New York, NY.

67. That at all times mentioned herein, the defendant, KAJIMA



DEVELOPMENT CORPORATION, operated the premises commonly known as 475 Ninth Avenue, New York, NY.

68. That at all times mentioned herein, the defendant, KAJIMA DEVELOPMENT CORPORATION, controlled the premises commonly known as 475 Ninth Avenue, New York, NY.

69. That at all times mentioned herein, the defendant, KAJIMA DEVELOPMENT CORPORATION, maintained the premises commonly known as 475 Ninth Avenue, New York, NY.

70. That at all times mentioned herein, the defendant, KAJIMA DEVELOPMENT CORPORATION, possessed and/or occupied the premises commonly known as 475 Ninth Avenue, New York, NY.

71. That at all times mentioned herein, the defendant, KAJIMA DEVELOPMENT CORPORATION, was the managing agent of the premises commonly known as 475 Ninth Avenue, New York, NY.

72. That at all times mentioned herein, the defendant, KAJIMA DEVELOPMENT CORPORATION, was the general contractor of the premises commonly known as 475 Ninth Avenue, New York, NY.

73. That on or prior to April 7, 2003, KAJIMA DEVELOPMENT CORPORATION, retained plaintiff's employer, to perform certain work, labor and/or services at the premises commonly known as 475 Ninth Avenue, New York, NY.

74. That on or prior to April 7, 2003, a party that KAJIMA DEVELOPMENT CORPORATION, had leased the aforementioned premises to had retained plaintiff's employer, to perform certain work, labor and/or services at the premises commonly known as 475 Ninth Avenue, New York, NY.

75. That at all times mentioned herein the plaintiff, GEORGE SANTOLI, was employed and was performing his work at the construction site as aforesaid, at 475 Ninth Avenue, New York, NY.

76. That on or about, April 7, 2003 while acting within the scope of his employment at the construction site as aforesaid, the plaintiff was caused to fall and sustain the injuries as set forth more fully below.

77. That the above occurrence was caused solely by and through the negligence of the defendants herein, without any negligence on the part of the plaintiff contributing thereto.

78. That the defendants, and/or each of them had both actual and constructive notice of the dangerous and defective conditions and practices complained of herein.

79. Plaintiff asserts an exemption from the abolition of joint and several liability pursuant to Article 16 of the C.P.L.R.

80. That the defendants, and/or each of them, and/or their agents, servants, associates and/or employees were negligent, careless and reckless, in that they:

a) Negligently, carelessly and recklessly, failed and omitted to properly construct, shore, equip, guard, arrange, operate and conduct the construction activities at the construction site as aforesaid, so as to provide reasonable and adequate protection and safety to the persons so employed therein, and more particularly to the plaintiff herein;

b) Failed and omitted to provide the plaintiff with a safe place to work and negligently maintained and separated a ladder at the

subject location;

- c) Failed and omitted to provide the plaintiff and the workers at the construction site thereat, with adequate, ample and proper scaffolding and ladders so as to perform their labor;
- d) Failed and omitted to insure that the working areas within the premises of the construction site as aforesaid were kept free of hazardous conditions and debris;
- e) Failed and omitted to provide the plaintiff with a safety belt;
- f) Failed and omitted to provide the plaintiff with a hardhat;
- g) Failed and omitted to properly inspect the construction site as aforesaid;
- h) Failed and omitted to properly and adequately coordinate the construction activities at the construction site as aforesaid so as to prevent the various trades from interfering with one another;
- i) Failed and omitted to construct and/or install barricades and/or other warnings so as to apprise workers, and more particularly the plaintiff herein, of the dangerous conditions existing thereat;
- j) Failed and omitted to comply with Section 240 of the Labor Law of the State of New York;
- k) Failed and omitted to comply with Section 241 of the Labor Law of the State of New York;
- l) Failed and omitted to comply with Section 241-a of the Labor Law of the State of New York;
- m) Failed and omitted to comply with Section 200 of the

Labor Law of the State of New York;

- n) Failed and omitted to comply with Rule 23 of the Industrial Code;
- o) Failed and omitted to properly secure the work area so that plaintiff could perform his labor in a safe environment;
- p) Failed and omitted to keep the work areas free of debris and other material;
- q) Failed and omitted to provide the Plaintiff with the proper and necessary equipment to perform his job;
- r) Failed and omitted to provide the Plaintiff with adequate hoists or other lifting equipment.

81. That as a result of the negligence of the defendants, and/or each of them, the plaintiff, GEORGE SANTOLI, became, still is and for a long time to come, will be sick, sore, lame, bruised, injured, disabled and wounded in and about the various parts of her head, limbs, body, blood vessels and surrounding tissues, and has suffered severe and extreme mental shock, anguish and psychic injuries, and that plaintiff was otherwise injured, and upon information and belief, said injuries are permanent. That by reason of the foregoing, the plaintiff was obligated to and did necessarily employ medical aid, hospital services, medicinals and medical supplies in an attempt to cure the aforesaid injuries, and has been prevented from his/her usual duties and will be so prevented for a long time to come.

82. That by reason of the foregoing, the plaintiff, GEORGE SANTOLI, has been damaged in the sum of FIVE MILLION (\$5,000,000.00) DOLLARS.

AS AND FOR A SECOND CAUSE OF ACTION  
ON BEHALF OF THE PLAINTIFF, GEORGE SANTOLI  
BASED UPON A THEORY OF STATUTORY LIABILITY:

83. That the plaintiff, GEORGE SANTOLI, repeats, reiterates and realleges each and every allegation of the complaint in paragraphs numbered "1" through "82", with the same force and effect as though each and every allegation were set forth more fully herein at length below.

84. That at all times mentioned herein, and on April 7, 2003, Section 200 of the Labor law of the State of New York was in full force and effect.

85. That at all times mentioned herein, and on April 7, 2003, the defendants, and/or each of them were subject to the provisions of the statute as cited herein above.

86. That on or about, April 7, 2003, the defendants, and/or each of them were in violation of the Statute as cited as herein above.

87. That as a result of the statutory violation as cited herein above, the plaintiff, GEORGE SANTOLI, was caused to sustain the injuries as set forth herein above.

88. That as a result of the foregoing the plaintiff, GEORGE SANTOLI, has been damaged in the sum of TWO MILLION (\$2,000,000.00) DOLLARS.

AS AND FOR A THIRD CAUSE OF ACTION  
ON BEHALF OF THE PLAINTIFF, GEORGE SANTOLI  
BASED UPON A THEORY OF STATUTORY LIABILITY:

89. That the plaintiff, repeats, reiterates and realleges each and every allegation of the complaint in paragraphs numbered "1" through "88", with the same force and effect as though each and every allegation

were set forth more fully herein at length below.

90. That at all times mentioned herein, and on April 7, 2003, Section 241 of the Labor law of the State of New York was in full force and effect.

91. That at all times mentioned herein, and on April 7, 2003, the defendants, and/or each of them were subject to the provisions of the statute as cited herein above.

92. That on or about, April 7, 2003, the defendants, and/or each of them were in violation of the Statute as cited as herein above.

93. That as a result of the statutory violation as cited herein above, the plaintiff, GEORGE SANTOLI, was caused to sustain the injuries as set forth herein above.

94. That as a result of the foregoing the plaintiff, GEORGE SANTOLI, has been damaged in the sum of TWO MILLION (\$2,000,000.00) DOLLARS.

AS AND FOR A FOURTH CAUSE OF ACTION  
ON BEHALF OF THE PLAINTIFF, GEORGE SANTOLI  
BASED UPON A THEORY OF STATUTORY LIABILITY;

95. That the plaintiff, GEORGE SANTOLI, repeats, reiterates and realleges each and every allegation of the complaint in paragraphs numbered "1" through "94", with the same force and effect as though each and every allegation were set forth more fully herein at length below.

96. That at all times mentioned herein, and on April 7, 2003, Section 240 of the Labor law of the State of New York was in full force and effect.

97. That at all times mentioned herein, and on April 7, 2003, the

defendants, and/or each of them were subject to the provisions of the statute as cited herein above.

98. That on or about, April 7, 2003, the defendants, and/or each of them were in violation of the Statute as cited as herein above.

99. That as a result of the statutory violation as cited herein above, the plaintiff, GEORGE SANTOLI, was caused to sustain the injuries as set forth herein above.

100. That as a result of the foregoing the plaintiff, GEORGE SANTOLI, has been damaged in the sum of TWO MILLION (\$2,000,000.00) DOLLARS.

AS AND FOR A FIFTH CAUSE OF ACTION  
ON BEHALF OF THE PLAINTIFF, STACEY SANTOLI

101. That the Plaintiff, STACEY SANTOLI repeats, reiterates and realleges each and every allegation of the complaint in paragraphs numbered "1" through "100", with the same force and effect as though each and every allegation were set forth more fully herein at length below;

102. That at all times hereinafter mentioned, Plaintiff, STACEY SANTOLI was the lawful spouse of the Plaintiff, GEORGE SANTOLI and as such said Plaintiff, STACEY SANTOLI was entitled to the society, services and consortium of the said Plaintiff;

103. By reason of the afore-described negligence of the Defendants, their agents, servants and/or employees, the Plaintiff, STACEY SANTOLI was deprived of the aforesaid society, services and consortium of the Plaintiff, GEORGE SANTOLI and shall forever be deprived of said society, services and consortium;



104. That by reason of the foregoing negligence on the part of the Defendants, the Plaintiff STACEY SANTOLI has been damaged in a sum exceeding FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS, together with the costs and disbursements of this action.

WHEREFORE, the plaintiff, GEORGE SANTOLI, demands judgment against the defendant(s), 475 NINTH AVENUE ASSOCIATES LLC, VJB CONSTRUCTION 475 9TH AVENUE LLC, VJB CONSTRUCTION CORP., SPIELER & RICCA ELECTRICAL CO. INC., and KAJIMA DEVELOPMENT CORPORATION in the amount of FIVE MILLION (\$5,000,000.00) DOLLARS, on the First Cause of Action;

WHEREFORE, the plaintiff, GEORGE SANTOLI, demands judgment against the defendant(s), 475 NINTH AVENUE ASSOCIATES LLC, VJB CONSTRUCTION 475 9TH AVENUE LLC, VJB CONSTRUCTION CORP., SPIELER & RICCA ELECTRICAL CO. INC., and KAJIMA DEVELOPMENT CORPORATION in the amount of TWO MILLION (\$2,000,000.00) DOLLARS, on the Second Cause of Action;

WHEREFORE, the plaintiff, GEORGE SANTOLI, demands judgment against the defendant(s), 475 NINTH AVENUE ASSOCIATES LLC, VJB CONSTRUCTION 475 9TH AVENUE LLC, VJB CONSTRUCTION CORP., SPIELER & RICCA ELECTRICAL CO. INC., and KAJIMA DEVELOPMENT CORPORATION in the amount of TWO MILLION (\$2,000,000.00) DOLLARS, and/or each of them in the amount of TWO MILLION (\$2,000,000.00) DOLLARS, on the Third Cause of Action;

WHEREFORE, the plaintiff GEORGE SANTOLI, demands judgment against the defendant(s), 475 NINTH AVENUE ASSOCIATES LLC, VJB CONSTRUCTION 475 9TH AVENUE LLC, VJB CONSTRUCTION CORP., SPIELER & RICCA ELECTRICAL CO. INC., and KAJIMA DEVELOPMENT CORPORATION in the amount of TWO MILLION (\$2,000,000.00) DOLLARS, on the Fourth Cause of Action.

WHEREFORE, the plainciff STACEY SANTOLI, demands judgment against the defendant(s), 475 NINTH AVENUE ASSOCIATES LLC, VJB CONSTRUCTION 475 9TH AVENUE LLC, VJB CONSTRUCTION CORP., SPIELER & RICCA ELECTRICAL CO. INC., and KAJIMA DEVELOPMENT CORPORATION in the amount of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS, on the Fifth Cause of Action.

Dated: New York, New York  
October 20, 2003

  
Yours, etc.,

Michael A. Rose  
Hach & Rose, LLP  
185 Madison Avenue, 8<sup>th</sup> Floor  
New York, NY 10016  
(212) 779-0057

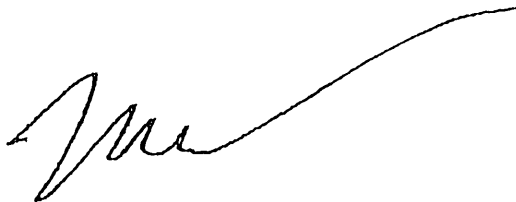
STATE OF NEW YORK        }  
                                      } ss.  
COUNTY OF NEW YORK     }

Michael A. Rose, being duly sworn, deposes and says:

That deponent is a member with HACH & ROSE, L.L.P., attorneys for the plaintiff in the within action; that the deponent has read the foregoing **SUMMONS AND COMPLAINT** and knows the contents thereof; that the same is true to deponent's knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true and the reasons that this verification is not made by the plaintiff and is made by deponent is that plaintiff does not reside in the county where the attorney for the plaintiff have their office.

Deponent further says that the source of deponent's information and the grounds of deponent's beliefs as to all matters not stated upon deponent's knowledge are from investigation made on behalf of said plaintiff.

DATED:       NEW YORK, NEW YORK  
              October 20, 2003

  
\_\_\_\_\_  
Michael A. Rose

# Exhibit E

Page 1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
GEORGE SANTOLI and STACEY SANTOLI,

PLAINTIFFS,

-against-

475 NINTH AVENUE ASSOCIATES, LLC., VJB  
CONSTRUCTION, 475 9TH AVENUE LLC, VJB  
CONSTRUCTION CORP., SPIELER & RICCA  
ELECTRICAL CO., INC. and KAJIMA DEVELOPMENT  
CORPORATION,

DEFENDANTS.

-----X  
VJB CONSTRUCTION CORP., LIBERTY INTERNATIONAL  
UNDERWRITERS a/s/o VJB CONSTRUCTION CORP.,  
THIRD-PARTY PLAINTIFFS,

-against-

R&J CONSTRUCTION CORP.; TRAVELERS INDEMNITY  
COMPANY; TRAVELERS INDEMNITY COMPANY OF  
AMERICA; TRAVELERS INDEMNITY COMPANY OF  
CONNECTICUT; REPUBLIC FRANKLIN INSURANCE  
COMPANY; UTICA NATIONAL INSURANCE COMPANY OF  
TEXAS; UTICA NATIONAL INSURANCE GROUP;  
UTICA MUTUAL INSURANCE COMPANY; REGIONAL  
SCAFFOLDING and HOISTING CO., INC.,

THIRD-PARTY DEFENDANTS.

-----X  
(caption continued)

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DATE: April 5, 2005  
TIME: 10:00 a.m.

EXAMINATION BEFORE TRIAL of the  
Defendant/Third-Party Plaintiffs, VJB CONSTRUCTION  
CORP., by a witness, EDWARD VENEZIA, taken by  
adverse parties, pursuant to a subpoena, held at  
the offices of Devereaux & Associates, LLP, 39  
Broadway, New York, New York 10006, before a Notary  
Public of the State of New York.

Page 3

## APPEARANCES:

HACH & ROSE, LLP  
Attorneys for the Plaintiffs  
185 Madison Avenue  
New York, New York 10016  
BY: MICHAEL ROSE, ESQ.

DEVEREAUX & ASSOCIATES, LLP  
Attorneys for the Defendant/Third-Party  
Plaintiffs  
39 Broadway  
New York, New York 10006  
BY: JENNIFER HUANG, ESQ.

O'CONNOR, O'CONNOR, HINTZ & DEVENY, LLP  
Attorneys for the Defendant  
SPIELER & RICCA ELECTRICAL CO., INC  
One Huntington Quadrangle  
Melville, New York 11747  
BY: PHILIP CASTELLANO, ESQ.

FUREY, KERLEY, WALSH, MATERA & CINQUEMANI, P.C.  
Attorneys for the Third-Party Defendants  
UTICA NATIONAL INSURANCE GROUP  
2174 Jackson Avenue  
Seaford, New York 11783  
BY: STEPHEN E. RACH II, ESQ.

RUTHERFORD & CHRISTIE, LLP  
Attorneys for the Third-Party Defendant  
R&J CONSTRUCTION CORP.  
300 E.42nd Street  
New York, New York 10017  
BY: TANIA M. TORNIO, ESQ.

Page 4

FRANK H. WRIGHT, ESQ.  
Attorney for the Third-Party Defendant  
REGIONAL SCAFFOLDING & HOISTING  
641 Lexington Avenue  
New York, New York 11747  
BY: ROBERT SANCHEZ, ESQ.

LAZARE, POTTER, GIANCOVAJ & KRANJAC, LLP  
Attorneys for the Third-Party Defendant  
TRAVELERS INSURANCE COMPANY  
950 Third Avenue  
New York, New York 10022  
BY: ANDREW PREISLER, ESQ.

\* \* \*

1 (Pages 1 to 4)

Page 5

## STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein that the sealing, filing and certification of the within examination before trial be waived; that all objections except as to form are reserved to the time of trial.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

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EDWARD VENEZIA, called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

## EXAMINATION BY

MR. ROSE:

Q. Please state your name for the record.

A. Edward Venezia.

Q. Where do you reside?

A. 30 Waterside Plaza, Apartment 31K, New York, New York 10010.

Q. Good morning, Mr. Venezia.

A. Good morning.

Q. My name is Michael Rose. I represent a man named George Santoli regarding an incident that occurred on April 2, 2003.

I am going to be asking you some questions regarding the construction project that was taken place at 475 Ninth avenue and the circumstances surrounding Mr. Santoli's accident.

If you don't understand my questions, please let me know.

A. Okay.

Page 7

E. VENEZIA

Q. I will either repeat or rephrase the question.

A. Okay.

Q. If you do answer the question, I am going to assume that you understood it. Okay?

A. Okay.

Q. 30 Waterside Plaza is your home address; is that correct?

A. Yes, it is.

Q. What is your date of birth?

A. 9/ 19/ 48.

Q. Are you currently employed?

A. Yes.

Q. Who are you employed by?

A. VJB Construction.

Q. What is your current job title?

A. Vice president.

MR. RACH: What was that?

THE WITNESS: Vice president.

MS. HUANG: I would like to go on the record for a minute. We are producing Mr. Venezia for all of the defendants 475 Ninth Avenue, Kajima and VJB.

Page 8

E. VENEZIA

MR. PREMISLER: How is that?

MS. HUANG: He is an authorized representative of all three of those entities.

MR. ROSE: Well, my suggestion is we take Mr. Venezia's deposition and we will determine whether or not there are additional depositions which will be necessary without waiving any objection to further depositions.

Okay? Is that okay with you counselor?

MS. HUANG: I will take it under advisement.

Q. You said vice president, sir?

A. Yes.

Q. Of operations or is there something specific?

A. No.

Q. Just vice president?

A. Yes.

Q. What are your duties and responsibilities as vice president at VJB Construction?

A. I handle the construction coordination of all of the jobs that we have.

2 (Pages 5 to 8)

Page 9

E. VENEZIA

Q. How long have you held the title of vice president?

A. Approximately five years.

Q. For that five year period of time, I assume you were employed by VJB Construction?

A. Yes.

Q. During that five year period of time, have you held any other title for VJB Construction?

A. No, just vice president.

Q. Okay. Prior to that five year period of time, were you employed by VJB Construction, were you employed by VJB or someone else?

A. VJB Construction.

Q. When did you begin your employment with VJB Construction?

A. Approximately ten years ago.

Q. When you were hired by VJB who -- strike that.

When you were hired by VJB Construction, what was your initial job title?

A. Project manager.

Q. Just briefly could you please tell me what your duties and responsibilities as project manager for VJB Construction were?

Page 11

E. VENEZIA

Q. Okay.

A. I am a graduate architect from Long Island University in 1971. I have been in the construction business since 1967.

Q. Okay. Outside of architecture, do you have any education or training in the field of construction?

A. I have taken some HVAC courses, CPM scheduling courses but nothing more than a couple of weeks or whatever.

Q. Okay. In the course of your employment for VJB Construction, do you have any role in the project that took place at 475 Ninth Avenue?

A. Yes.

MS. HUANG: Objection but you can answer.

A. Yes.

Q. What was your role in the project that took place at 475 Ninth Avenue?

A. I was a vice president with VJB that was part of an entity of Kajima VJB LLC which ran the project.

Q. Can you explain to me what that means, that you were vice president for VJB that ran an

Page 10

E. VENEZIA

A. I was assigned either one or two jobs to handle all the paperwork correspondence, requisitions, coordination between us and the owner.

Q. Okay. Did that work call for you being physically present on construction sites?

A. Sometimes.

Q. Do your duties and responsibilities as vice president at VJB require you to be present on construction sites?

A. Occasionally just not as much as a project manager would be.

Q. Generally speaking, what would the purpose be for you to be on the construction site in the scope of your duties as a vice president at VJB?

A. They were to have meetings where with the owners and their representative to discuss the project, the progress of the project and to review requisitions and scheduling.

Q. Now, actually before we get to this project, could you just give me a brief synopsis of your educational background?

A. Sure.

Page 12

E. VENEZIA

entity known as Kajima?

A. Well, what it is --

MS. HUANG: Objection. But it is okay.

A. What it is, I was the project exec on that particular project. The title was vice president but it was a project exec that represented VJB, Kajima VJB LLC on this particular project.

Q. Okay. Who is the -- strike that.

Who was the owner of the property located at 475 Ninth Avenue?

A. I believe it was Dermot D-E-R-M-O-T.

Q. Who is Dermot? Is that some sort of ownership entity?

A. Yes, it is an ownership entity.

Q. Is that entity comprised or does it have any relationship to either VJB or Kajima?

A. I don't understand the question.

Q. Okay. Are you familiar with the principals of the company that you said was Dermot?

A. Yes.

Q. Who are those people?

A. As far as I know, they were Bill Dicky

3 (Pages 9 to 12)



Page 21

1 E. VENEZIA  
 2 MS. HUANG: You keep saying VJB.  
 3 MR. ROSE: Okay.  
 4 MS. HUANG: Can you clarify from this  
 5 point forward?  
 6 MR. ROSE: Well, you said that you  
 7 were producing him on behalf of all these  
 8 entities.  
 9 MS. HUANG: Yes but the actual entity  
 10 you have to be accurate as to the entity.  
 11 MR. ROSE: Okay.  
 12 Q. Were these minutes after the minutes  
 13 were taken, were they later distributed at any  
 14 point?  
 15 A. Yes.  
 16 Q. And were they distributed to you in  
 17 addition to the other people who attended the  
 18 meetings?  
 19 A. Yes, all of the attendants got copies.  
 20 Q. Are these records that are kept in the  
 21 ordinary course of business by VJB Construction?  
 22 A. They would be kept in the ordinary  
 23 business by Kajima/VJB LLC.  
 24 Q. Okay.  
 25 A. That entity.

Page 22

1 E. VENEZIA  
 2 Q. Where would they be kept?  
 3 A. Probably be in archives at this point.  
 4 Q. Okay. How often did these meetings  
 5 take place?  
 6 A. They were sporadic.  
 7 Q. Okay.  
 8 A. Sometimes once a month, sometimes two  
 9 or three times a month.  
 10 Q. Okay.  
 11 A. Depending on items that we had to  
 12 discuss.  
 13 Q. Okay.  
 14 A. They also and I should interject they  
 15 were not always at the job site. They were at the  
 16 architects office as well.  
 17 Q. Okay. Who is the architect on this  
 18 job?  
 19 A. H. Thomas O'Hara.  
 20 Q. Is that an office in Manhattan?  
 21 A. Yes, it is.  
 22 MR. ROSE: I am going to make a  
 23 request for the owner meeting minutes.  
 24 MS. TORNO: I join in that request.  
 25 MR. RACH: I join in.

Page 23

1 E. VENEZIA  
 2 MR. PREMISLER: I join in.  
 3 Q. You stated also that you would attend  
 4 -- strike that.  
 5 You would go to the job site for  
 6 requisitions; is that correct?  
 7 A. Yes.  
 8 Q. What was the purpose for you going to  
 9 the job site for requisitions?  
 10 A. I review the requisitions with our  
 11 superintendent whether they were correct as far as  
 12 work completed during the specific time period.  
 13 Q. Were there schedules for this job?  
 14 A. Yes.  
 15 Q. For certain types of work to be  
 16 completed?  
 17 A. Yes.  
 18 Q. Who kept these schedules?  
 19 A. The schedules would be kept by the LLC  
 20 as well as being incorporated in some of the  
 21 contracts.  
 22 Q. Okay. When you say the LLC, you are  
 23 referring to the joint?  
 24 A. Kajima.  
 25 Q. The joint venture?

Page 24

1 E. VENEZIA  
 2 A. Yes, Kajima VJB, LLC.  
 3 Q. Would those schedules also be in  
 4 archives right now?  
 5 A. Yes.  
 6 MR. ROSE: I am going to make a  
 7 request for the any construction schedule  
 8 records of construction schedules that were  
 9 made by the joint venture of Kajima and VJB.  
 10 MS. TORNO: I join in that request.  
 11 MR. RACH: I join in.  
 12 MR. PREMISLER: I think we all do.  
 13 Q. Was there a general contractor on this  
 14 job?  
 15 A. No, the LLC Kajima/VJB LLC was the  
 16 construction manager.  
 17 Q. Okay. Generally speaking, what were  
 18 the duties and responsibilities of the joint  
 19 venture as construction manager of this project?  
 20 A. We would coordinate the work with all  
 21 of the subcontractors.  
 22 Q. Did that role also include hiring the  
 23 subcontractors to perform work on the site?  
 24 A. Yes, we would have a contract with the  
 25 subcontractors which actually would be signed by

6 (Pages 21 to 24)

Page 25

1 E. VENEZIA  
 2 the owner and the construction manager.  
 3 Q. Is that --  
 4 A. Which is the LLC.  
 5 Q. Okay.  
 6 A. Yes.  
 7 MR. PREMISLER: When you keep saying  
 8 LLC, you are referring to the joint venture?  
 9 THE WITNESS: Referring to Kajima VJB  
 10 Construction, LLC.  
 11 MR. PREMISLER: Okay.  
 12 Q. Did the joint venture as construction  
 13 manager also have a role as far as site safety was  
 14 concerned?  
 15 A. We have the LLC, Kajima VJB  
 16 Construction services LLC has a site safety plan  
 17 that's attached to every subcontractor's contract.  
 18 Q. Is that a standard form that's attached  
 19 to every single subcontractor's contract?  
 20 A. Yes, it is.  
 21 Q. I notice that you are looking at a  
 22 document right now.  
 23 A. This is a --  
 24 Q. Why don't we mark that?  
 25 MR. ROSE: Okay. Mark this as

Page 26

1 E. VENEZIA  
 2 Plaintiff's Exhibit 2.  
 3 (Whereupon, the aforementioned document  
 4 was marked as Plaintiff's Exhibit 2 for  
 5 identification as of this date by the  
 6 Reporter.)  
 7 MR. ROSE: Off the record.  
 8 (Whereupon, an off-the-record  
 9 discussion was held.)  
 10 Q. I am going to ask you to take a look at  
 11 what has been marked as Plaintiff's Exhibit 2 for  
 12 identification.  
 13 A. Yes.  
 14 Q. Do you recognize that document?  
 15 A. Yes.  
 16 Q. What is that?  
 17 A. It is a contract between R and J  
 18 Construction subcontractor for dry wall, the owner  
 19 and Kajima VJB Construction Services, LLC.  
 20 Q. Is that a record that's kept in the  
 21 ordinary course of business by VJB Construction?  
 22 A. It is kept as an ordinary of business  
 23 by Kajima/VJB Services LLC.  
 24 Q. Okay. The joint venture?  
 25 A. Yes.

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1 E. VENEZIA  
 2 Q. You were referring earlier to something  
 3 called the site safety plan?  
 4 A. Yes.  
 5 Q. Is that contained within the document  
 6 that has been marked as Plaintiff's Exhibit 2 for  
 7 identification?  
 8 A. Yes, it is.  
 9 Q. Could you show me where it is?  
 10 A. (indicating).  
 11 Q. Okay.  
 12 MR. PREMISLER: Off the record.  
 13 (Whereupon, an off-the-record  
 14 discussion was held.)  
 15 MR. ROSE: For the record, the site  
 16 safety plan is marked Exhibit F at the top of  
 17 the document on Plaintiff's Exhibit 2 for  
 18 identification and the first page also states  
 19 on the bottom 1 of 5.  
 20 Q. Generally speaking, does the site  
 21 safety plan designate responsibility, safety  
 22 responsibility on the site to any particular entity  
 23 or entities?  
 24 A. Yes, this particular safety plan and I  
 25 marked it indicates that they should, they meaning

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1 E. VENEZIA  
 2 the subcontractor is responsible for a site safety  
 3 coordinator that's employed by him.  
 4 Q. Him being?  
 5 A. Him being the subcontractor.  
 6 Q. Okay.  
 7 A. It also states what responsibility he  
 8 has for having meetings with the LLC. It also  
 9 states that they are responsible.  
 10 Q. When you say meetings with the LLC,  
 11 what specifically are you referring to?  
 12 A. We are referring to is we had weekly  
 13 meetings with a representative for from the  
 14 subcontractor, each subcontractor to discuss any,  
 15 to make sure that the subcontractors are following  
 16 the site safety plan that we attached to their  
 17 contract.  
 18 Q. Okay. And did you attend these weekly  
 19 meetings?  
 20 A. No, I do not.  
 21 Q. Who would attend the weekly meetings?  
 22 A. The site safety manager of the LLC. At  
 23 this, I forget his name. I believe it was either  
 24 Jessy Jackson or a guy by the name of Wall.  
 25 Q. Gary Wall?

7 (Pages 25 to 28)

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1 E. VENEZIA  
 2 moved from one floor to another?  
 3 A. No.  
 4 MS. HUANG: Objection.  
 5 Q. As of April 2, 2003, are you aware of  
 6 whether there were any containers on the top floor  
 7 of the project?  
 8 A. No, I am not aware.  
 9 Q. Would there be any records kept as to  
 10 where the containers would have been located on any  
 11 particular day?  
 12 A. No.  
 13 Q. When was the last time on or before  
 14 April 2, 2003, that Spieler and Ricca performed any  
 15 work on the top floor of the project?  
 16 A. I don't know. I would have to check  
 17 the records.  
 18 Q. What records would you check to answer  
 19 that question?  
 20 A. The daily field reports.  
 21 Q. That's the daily reports we have spoken  
 22 of earlier?  
 23 A. Yes.  
 24 Q. What would be reflected on the daily  
 25 reports to indicate what contractor, if any, did

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1 E. VENEZIA  
 2 work on the top floor of the project on April 2,  
 3 2003?  
 4 A. It would list the contractors. It  
 5 would list how many people they had working for  
 6 them or foreman, the journeyman, it would usually  
 7 list the areas where they were working. They might  
 8 list tenth floor, twelfth floor, whatever floor  
 9 they were on.  
 10 Q. In general what stage was the  
 11 construction at as of April 2, 2003?  
 12 A. I would have to check. I don't  
 13 remember.  
 14 Q. What would you check?  
 15 A. I would check again, once again the  
 16 daily field reports.  
 17 Q. Okay.  
 18 A. I would have to check the requisitions  
 19 to see which previous monies they had gotten paid.  
 20 Q. As of April 2, 2003, how many floors of  
 21 the project had received either a TCO or a CO?  
 22 A. I don't know.  
 23 Q. Had any floors received the TCO or a CO  
 24 of as of April 2, 2003?  
 25 A. I would have to check. I don't recall.

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1 E. VENEZIA  
 2 Q. Again, what would you check?  
 3 A. I would have to check the dates of the  
 4 TCO.  
 5 Q. Who was in -- withdrawn.  
 6 Was there a foreman for the laborers?  
 7 A. Yes.  
 8 Q. Who was that?  
 9 A. I believe it was Sammy Denny.  
 10 Q. What is the basis of your testimony  
 11 that Mr. Denny was the foreman?  
 12 A. I checked -- again, once again I would  
 13 have to check the payroll records or the time  
 14 sheets but I believe it was Sammy.  
 15 Q. Was there only one laborer foreman  
 16 during the life?  
 17 A. Yes.  
 18 Q. Of this project?  
 19 A. Yes.  
 20 Q. Did the laborer foreman have any duties  
 21 or responsibilities to provide anything in writing  
 22 on a daily or weekly basis to the LLC?  
 23 A. No.  
 24 Q. Do you know who employs Mr. Denny at  
 25 the current time?

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1 E. VENEZIA  
 2 A. VJB.  
 3 Q. What is his job now?  
 4 A. He is the laborer foreman at another  
 5 particular job site.  
 6 Q. Do you know approximately the  
 7 completion date for this project?  
 8 A. I don't recall. I would have to check  
 9 to see what the schedule said.  
 10 Q. Can you give me an approximation?  
 11 A. I can't. It is too long ago.  
 12 Q. Okay.  
 13 A. Many jobs ago.  
 14 Q. Was there anyone else from the joint  
 15 venture present at this job site on a daily or  
 16 weekly basis in a managerial capacity other than  
 17 the project manager, the superintendent, the  
 18 assistant superintendent and the laborer foreman?  
 19 A. No, not from the LLC on the job site.  
 20 Q. Okay.  
 21 A. Continually, no.  
 22 Q. Would there be anyone in a direct  
 23 employ of VJB on the job site?  
 24 MS. HUANG: Objection.  
 25 A. They would be under the LLC Kajima/VJB

29 (Pages 113 to 116)

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E. VENEZIA

1 LLC.

2 Q. So there wouldn't be anyone else that  
3 you haven't testified with regard to who may have  
4 been a direct employ of Kajima or VJB or 457 Ninth?

5 MS. HUANG: Objection.

6 A. There, it is under a joint venture  
7 agreement that we did this job.

8 Q. Okay. So I am just trying to make sure  
9 that there wouldn't be anyone there from VJB who  
10 wasn't part of the joint venture or who are any  
11 duties or responsibilities with regard to this  
12 project?

13 A. Again, it would be under the joint  
14 venture.

15 Q. The same is true with Kajima?

16 A. That would be under the joint venture.  
17 That's whoever was hired to do, there was Kajima  
18 and VJB personnel who formed the joint venture.

19 MR. PREMISLER: I am sorry. I missed  
20 half of that.

21 THE WITNESS: Kajima and VJB is a  
22 joint venture and the people who were assigned  
23 on that job were assigned to the joint  
24 venture.  
25

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E. VENEZIA

1 MR. PREMISLER: So everyone was  
2 employed by the joint venture.

3 THE WITNESS: Yes.

4 MR. SANCHEZ: They were paid by the  
5 joint venture?

6 THE WITNESS: They were paid by the  
7 joint venture.

8 MR. CASTELLANO: I have no further  
9 questions at this time. Thank you.

10 EXAMINATION BY

11 MR. SANCHEZ:

12 Q. Mr. Venezia, my name is Robert  
13 Sanchez. I represent the Defendant Regional  
14 Scaffolding and Hoisting Company.

15 We are from the law firm of Frank  
16 Wright and Associates.

17 Where was 475 Ninth Avenue located the  
18 building itself?

19 A. Ninth Avenue and 37th Street.

20 Q. Was it on the corner?

21 A. It was on the north west corner.

22 Q. Was the front of the building, the  
23 front of the building facing Ninth avenue?

24 A. No, the entrance to the building was on  
25

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E. VENEZIA

1 47th Street.

2 MR. CASTELLANO: Off the record.

3 (Whereupon, an off-the-record  
4 discussion was held.)

5 Q. What was the shape of the building?

6 A. I think it was like a U shape type of  
7 building.

8 Q. Okay.

9 A. With a court yard.

10 Q. Okay. When you say U shaped, where  
11 were the prongs of the U facing?

12 A. They were facing west.

13 Q. Can you tell me what Regional  
14 Scaffolding and Hoisting did at the site?

15 A. I am sorry. I didn't hear you.

16 Q. Can you tell me what Regional  
17 Scaffolding and Hoisting did at the site?

18 MS. HUANG: Objection.

19 A. They proceeded the rack and pinion, the  
20 dual rack and pinion hoist as well as the sidewalk  
21 bridge.

22 Q. Anything else?

23 A. Not to my knowledge.

24 Q. Can you describe the rack and pinion  
25

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E. VENEZIA

1 hoist, please?

2 A. It is a dual exterior elevated that  
3 ride on the track. It is two cars that go up on  
4 and down on the track.

5 Q. So there is one tower?

6 A. Yes.

7 Q. Two hoist cars on the tower?

8 A. Yes.

9 Q. Was one designated as material hoist,  
10 one passenger hoist?

11 A. Yes.

12 Q. Where was the tower located?

13 A. It was on 37th Street.

14 Q. So in the front of building; correct or  
15 what would be the front of the building?

16 A. Approximately twenty feet off the  
17 northwest corner.

18 Q. Did the front of the building extend  
19 all the way to the curb or was it set back?

20 A. It was set back from the sidewalk.

21 Q. How far was it set back?

22 A. Approximately ten feet.

23 Q. Generally did Regional do any work on  
24 the interior of the building?  
25

30 (Pages 117 to 120)



Page 121

1 E. VENEZIA  
 2 MS. HUANG: Objection.  
 3 Q. All of its work was performed on the  
 4 outside of the building?  
 5 A. As far as I know, yes.  
 6 Q. Did the building as constructed contain  
 7 elevators?  
 8 A. Yes.  
 9 Q. Where were the elevators located?  
 10 A. They were located off the entrance on  
 11 37th Street, you go through a lobby and it is off  
 12 to the left a little.  
 13 Q. To the left of the entrance?  
 14 A. Yes.  
 15 Q. How many elevators were there at that  
 16 spot?  
 17 A. I believe two.  
 18 Q. Were there any other elevators in the  
 19 building?  
 20 A. I don't remember. I know those would.  
 21 I don't know. There was another elevator and it  
 22 served the garage. I don't know if there was  
 23 another service elevator or not. I have to look at  
 24 the number.  
 25 Q. The other elevator that serviced the

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1 E. VENEZIA  
 2 garage, where was that situated?  
 3 A. That was in the garage area.  
 4 Q. Where is the garage area?  
 5 A. To the end of 37th Street.  
 6 Q. When you say the end of 37th Street,  
 7 are you talking about east or west?  
 8 A. I am talking west.  
 9 Q. So the western most part of the  
 10 building off 37th Street is where the garage is; is  
 11 that correct?  
 12 A. Correct.  
 13 MR. SANCHEZ: Off the record.  
 14 (Whereupon, an off-the-record  
 15 discussion was held.)  
 16 MR. SANCHEZ: Back on the record.  
 17 Q. Just to clarify the discussion that we  
 18 had off the record, we will go back, you wanted to  
 19 change one of your answers about where the building  
 20 was located.  
 21 Was it on the southwest corner?  
 22 A. Yes, it is on the southwest corner. I  
 23 am sorry. Not the north west.  
 24 Q. Thank you very much.  
 25 A. Okay.

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1 E. VENEZIA  
 2 Q. Do you know when the elevators were  
 3 functioning, when the elevators began to function  
 4 in the building?  
 5 A. The interior elevators?  
 6 Q. The interior elevators.  
 7 A. I would have to check to see when.  
 8 Q. Is it safe to say that they were  
 9 functioning prior to when the temporary certificate  
 10 of occupancy would have been issued?  
 11 A. Yes, I need the final was on the  
 12 elevators prior to issuance of a temporary  
 13 certificate of occupancy.  
 14 Q. Plaintiff testified that an temporary  
 15 certificate of occupancy was already for certain  
 16 parts of the building; as we sit here today, do you  
 17 have any basis for disputing that?  
 18 A. No, I would have to check to see if  
 19 that were true.  
 20 Q. Can you tell me what BX cable is?  
 21 MS. HUANG: Objection.  
 22 A. BX cable, is my understanding it is  
 23 flexible cable that has wire in it that gets fed to  
 24 outlets and switches.  
 25 Q. Do you know whether the BX cable was

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1 E. VENEZIA  
 2 used at the site?  
 3 A. Whether it was used?  
 4 Q. Yes.  
 5 A. Yes, it was used by the electricians,  
 6 too.  
 7 Q. For what purpose?  
 8 A. For electrical outlets and switches  
 9 within the inside of the stud.  
 10 Q. Would any of the other subcontractors  
 11 would have been using-- excuse me. Withdrawn.  
 12 Would any of the other parties or  
 13 entities at the site use BX cable at the site?  
 14 MS. HUANG: Objection.  
 15 A. Not that I know of. Only the  
 16 electricians would be using it.  
 17 MR. CASTELLANO: Objection to form.  
 18 MR. ROSE: Was Spieler and Ricca the  
 19 only electrical subcontractors on the site?  
 20 THE WITNESS: Yes.  
 21 MR. ROSE: Okay.  
 22 Q. Did there come a point in time where  
 23 the hoist was dismantled at the site?  
 24 A. Yes.  
 25 Q. When was that?

31 (Pages 121 to 124)

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1 E. VENEZIA  
 2 A. I would have to check the records of  
 3 when it came down. I don't know.  
 4 Q. Would the hoist have been dismantled  
 5 prior to the issuance of temporary occupancy for  
 6 the site?  
 7 A. No.  
 8 Q. Do you recall when the exterior walls  
 9 were fully erected and finished at the site?  
 10 A. No.  
 11 Q. Would the exterior walls been finished  
 12 prior to the temporary certificate occupancy?  
 13 A. All of the interior walls would have  
 14 been done to where the hoist was located.  
 15 Q. The plaintiff testified at his  
 16 deposition that the hoist was dismantled in March  
 17 of 2003; as we sit here today, do you have any  
 18 reason to dispute that?  
 19 MS. HUANG: Objection.  
 20 A. No.  
 21 Q. Again, Regional's records that we  
 22 turned over their daily schedule indicates that the  
 23 hoist was dismantled in March of 2003, do you have  
 24 any basis to dispute that as we sit here today?  
 25 A. No.

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1 E. VENEZIA  
 2 Q. When you would visit the site, would  
 3 you walk the site?  
 4 MS. HUANG: Objection.  
 5 A. Yeah, I would walk through the  
 6 building.  
 7 Q. Would you walk through the floor to  
 8 take a look at the conditions and the progress that  
 9 was going on at the site?  
 10 A. Not necessarily every floor. I would  
 11 spot the, check the areas. Again, the  
 12 requisitions, I would have to verify what work was  
 13 being done with the superintendent. If I had a  
 14 question, I would ask him and we would take the  
 15 hoist up and take a look.  
 16 MR. ROSE: Before you move on, can I  
 17 ask one question?  
 18 MR. SANCHEZ: Sure.  
 19 MR. ROSE: After the hoist was removed  
 20 from the site, how was debris removed from the  
 21 site?  
 22 THE WITNESS: Through the interior  
 23 elevators.  
 24 MR. ROSE: Through the interior  
 25 elevators?

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1 E. VENEZIA  
 2 THE WITNESS: Yes.  
 3 MR. ROSE: Was that done by the LLC  
 4 laborers?  
 5 THE WITNESS: Yes.  
 6 MR. ROSE: Okay. Thank you.  
 7 Q. Do you know whether any subcontractors  
 8 stored material on the top floor?  
 9 MS. HUANG: Objection.  
 10 Q. Of the building?  
 11 A. No, I don't know.  
 12 Q. Do you know whether Regional had  
 13 anything to do with the top floor, the inside of  
 14 the top floor of the building?  
 15 MS. HUANG: Okay.  
 16 A. No. Regional just provided like I said  
 17 previously the hoist and the sidewalk bridge, not  
 18 material.  
 19 Q. Was Regional on site after the  
 20 installations were completed?  
 21 A. No.  
 22 MR. SANCHEZ: I have nothing further.  
 23 Thank you.  
 24 EXAMINATION BY.  
 25 MR. PREMISLER:

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1 E. VENEZIA  
 2 Q. Good afternoon. My name is Andrew  
 3 Premisler. I represent Third-party Defendants  
 4 Travelers Indemnity Company in this action.  
 5 I am going to ask you just a couple of  
 6 follow up questions.  
 7 A. Okay.  
 8 Q. Do you have any personal knowledge of  
 9 when, if at all, VJB Construction requested  
 10 insurance coverage from Travelers in connection  
 11 with Mr. Santoli's alleged accident?  
 12 MS. HUANG: Objection. If he knows.  
 13 A. It wouldn't be VJB. It would be the  
 14 Kajima VJB that ran the job. I don't know if any  
 15 other.  
 16 Q. Why do you say that?  
 17 A. Because that's the entity that did the  
 18 job.  
 19 Q. Okay.  
 20 A. I don't know if VJB IS a separate  
 21 company different applied for insurance through  
 22 Travelers. I wouldn't know.  
 23 Q. Okay. Did VJB construction Corp. do  
 24 any work at all on this project?  
 25 A. It was all done through Kajima/VJB LLC.

32 (Pages 125 to 128)

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E. VENEZIA

Q. So VJB Construction Corp. itself didn't do any work?

A. That's correct.

Q. The same no one would have done any work for VJB construction Corp. on this project?

A. No. It would all be done through the LLC. That's what the contracts all with.

Q. What about for Kajima Development Corporation, do you know who Kajima Development Corporation is?

MS. HUANG: Objection.

A. No. I don't know who Kajima Development Corporation is.

Q. Are you appearing here today on behalf of an entity known as Kajima Development Corporation?

A. Kajima Construction Services I think it was.

Q. So you are not appearing here today on behalf of Kajima Development Corporation?

A. I don't know. They could be one in the same.

Q. Do you have any knowledge of?

A. No.

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E. VENEZIA

Q. What, if any, relationship there is between Kajima development Corporation and Kajima Construction Services?

A. No.

Q. Okay.

A. I don't have any personal knowledge.

Q. Do you know who Kajima Construction Services is?

A. They are our joint venture partner on this particular job.

Q. At the time of this project, did you work for Kajima Construction Services?

A. No.

Q. Have you ever been employed by Kajima Construction Services?

A. No, I have not.

Q. Have you ever been employed by Kajima Development Corporation?

A. No, I have not.

Q. Have you ever been employed by 475 Ninth Avenue Associates LLC?

A. No.

Q. Have you ever been employed by Dermot Meridien, LLC?

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E. VENEZIA

A. No.

Q. Is that the company you referred to earlier as Dermot?

A. Yes.

Q. Does that refresh your recollection?

A. Yes.

Q. Are you aware, do you have any personal knowledge at all about any requests for coverage made on behalf of the joint venture Kajima/ VJB to Travelers?

A. No.

Q. Who would know anything about that, if you know?

A. I don't know.

Q. Okay. Was there anybody working at the time of this project or since then who would have any knowledge about any requests for coverage made by that joint venture in connection with this project?

A. Not that I know of.

Q. Who would have that information?

A. I don't know.

Q. You mentioned earlier that there was a secretary who works for VJB now and her name?

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E. VENEZIA

A. Jennifer Fernandez.

Q. Right. You mentioned earlier that she was involved or has some job responsibilities in connection with insurance claims; is that correct?

A. What she would do for, not insurance claims for example lawsuits.

Q. Okay.

A. Everything would go to her. She would make me aware of, for example, today that I would have to come and anything that the lawyers might ask for would go through her. I mean they call me and I refer them to her.

Q. So she would have no responsibilities in connection with making any claims for requests for coverage to insurance companies themselves?

A. No.

Q. In connection with this or any other project?

A. Right.

Q. Is there anybody currently employed by VJB Construction that would have such responsibility?

A. Not that I'm aware of.

Q. Okay. Do you have any personal

33 (Pages 129 to 132)